

ATTACHMENT

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COPY OF ANC-3E TRAFFIC REPORT

**Top Ten Traffic Problems in ANC 3E
Friendship Heights,
American University Park
Tenleytown**

**Prepared for Follow-Up Ward 3 Traffic Summit
Monday, January 28, 2002**

The major traffic problems in Friendship Heights, American University Park and Tenleytown can be categorized in two areas:

- Commuters and commercial traffic (trucks) using residential streets to avoid the arteries designed for commuter and commercial traffic;
- Speeding on residential streets.

Our third category, "unresponsiveness of DPW to concerns, suggestions and requests from residents for measures to mitigate the excessive traffic and other dangerous conditions in our residential neighborhoods" has begun to be addressed by the Ward 3 Transportation Policy Committee and the Neighborhood Action Coordinator.

The Ward 3 Transportation Policy Committee has provided a forum for ANC Commissioners to meet face to face with DPW, OP and MPD officials to communicate our issues and concerns. It has also provided a structure and timeline for DPW, OP and MPD staff to respond to our requests. While we might prefer a faster response in many instances, we can see that attention is being paid to our concerns, issues, requests, and that progress HAS been made on tangible, short-term requests (traffic signs, traffic enforcement, etc.) as well as on longer term issues (speed bumps, public information campaigns, traffic manuals, traffic studies, truck management plans). Just having a monthly opportunity to meet with the DPW, OP and MPD staff, get status reports and bring up problems is a HUGE improvement.

The MPD has also increased its attention to traffic issues. Lt Patrick Burke's red light camera and photo radar campaigns, and Commander Newsham's involvement of the community via ANC commissioners in selecting trouble spots for extra traffic enforcement activity is greatly appreciated and a great improvement over the situation of six months ago.

I feel DPW and MPD are much more aware of, involved with and committed to resolving Ward 3 transportation related problems. Most of the underlying causes of the problems and the problems themselves are still there. But at least there's a structure in place to bring the necessary attention and resources to tackling the underlying causes and solving the problems. We're getting there. But much remains to be done.

Status of Specific Longstanding Problems in ANC 3E

1. Traffic Study of Friendship Heights

The traffic problems in Friendship Heights are the direct result of the development of Friendship Center in the 5300 block of Wisconsin Avenue, NW.

In June, 1998, prior to completion of Friendship Centre, Advisory Neighborhood Commission 3E submitted a written request to Karen Benefield of DPW for a traffic analysis of the portion of the Friendship Heights neighborhood, bounded by Military Road NW, 41st Street NW, Jenifer Street NW, and 43rd Street NW. This request was re-iterated in July 1999.

When we received no response to our 1998 and 1999 requests for a traffic study, we submitted numerous requests, sometimes repeatedly, for specific measures to mitigate particularly egregious problems in this area. In the last six months some of our requests have been filled:

- Designate the 5300 block of 43rd Street, NW one way south -- *we are waiting results of the requested FH traffic study to really push for this;*
- Install appropriate signage directing trucks to use the through-block connector between Jenifer Street and Military Road NW behind Friendship Center: *No action yet, but under discussion.*
- Install NO THRU TRUCKS signs at four intersections: **DONE. Thank you.**

43rd Street and Military
43rd Street and Jenifer
42nd Place and Military
42nd Street and Military

- Install a NO LEFT TURN sign at the Jenifer Street end of the thru block connector so that trucks exiting the Connector will not use 43rd Street to get to Military Road; **SIGN INSTALLED. Thank you. Questionable as to whether it has had any impact on truck traffic on 43rd Street.**
- Re-install the two DO NOT ENTER signs at either end of the alley connecting 43rd Street and 42nd Place, NW; **DONE. Thank you. Has had some effect on cut-thru traffic.**
- Install ACCESS TO LOCAL GARAGES ONLY signs at either end of the alley connecting 43rd Street and 42nd Place, NW; *No action. Under discussion.*
- Install LOCAL TRAFFIC ONLY signs at Jenifer and Wisconsin, 43rd and Military, 42nd Place and Military, and 42nd Street and Military; *No action.*
- Eliminate the "no left turn" from Western Avenue going west to go south onto Wisconsin Avenue: **DDOT decision not to do this. Have asked for decision to be revisited. Awaiting explanation as to why this is not appropriate from a traffic standpoint.**

On the issue of a traffic study of FH, although the DDOT Acting Director reported that funds for the FH Traffic study were committed and that work, at least the RFP would/could start in Oct 01, I've seen no evidence of any RFP and subsequent status reports to the Ward 3 Transportation Policy Committee have not mentioned any movement on the FH Traffic Study. This is a major, major lack of success and almost outweighs all the other good things that have occurred.*

2. Chesapeake Street and Nebraska Avenue, NW

This intersection is between two public schools, Wilson High School and Alice Deale Junior High School and is used by students of both schools en route to and from school. It poses a danger to pedestrians due to speeding vehicular traffic on Nebraska Avenue. The residents of Chesapeake Street, NW and Nebraska Avenue, NW and 38th Street NW have circulated and signed a petition requesting installation of a traffic light at the intersection of Chesapeake Street, NW and Nebraska Avenue, NW in order to slow traffic and to provide greater pedestrian safety. ANC 3E voted unanimously at its August 10, 2000 meeting to support the petition and submitted it to Wil DerMinassian of DPW. Traffic light approved. Engineering studies under way. Thank you.

3. Special Parking Program on Chesapeake Street, NW between Nebraska and 40th Street, NW.

The Woodrow Wilson Senior High School Student Government Association researched and requested a special parking program on Chesapeake Street, NW between Nebraska and 40th Street, NW for the students and teachers at Wilson High School. Their proposal would provide parking stickers for students and teachers to use the 68 metered parking spaces during school hours. This would alleviate teacher and student parking in the residential neighborhoods surrounding the school, make it safer for students to park without having to cross dangerous intersections at Nebraska Avenue and Chesapeake Street and Nebraska Avenue and Cumberland Street, and would free up blacktop space currently used for teacher parking. At its April 13, 2000 meeting, ANC 3E unanimously endorsed this proposal. Gwen Mitchell of the Parking Services Administration has informed us that because in 1986 Wilson High School requested the parking meters in order to discourage all day commuter parking, this latest request could not be honored. **Have been told that DPW can't respond to requests for special populations. Suggested that we work with DC Council to provide DPW that authority or work with DPW to develop alternative parking options.**

4. 47th and Warren Streets, NW

ANC3E has submitted two resolutions to DPW requesting the return of the four-way stop sign at this intersection. 50 residents of the area signed a petition supporting the resolutions. Massachusetts Ave, NW to 46th Street, NW is a speedway and cut through for commuters, with no stop sign until 46th Street. Going east on Warren Street, NW is uphill, with no sidewalks on either side of Warren between 47th and 48th Streets, NW.

Pedestrians must walk in the street and drivers can't see what's coming because of the incline.

No action as far as I know.

5. A stop sign at intersection of 45th and Harrison Streets, NW.

Currently there are stop signs only on 45th Street, NW. Drivers on 45th Street assume that there are stop signs on Harrison also, which has resulted in many near misses at this intersection. ANC 3E requested an analysis of this intersection, which was done in the spring of 1999. The report asserted that, according to regulations, there was not enough traffic to merit a four-way stop sign. We are requesting reconsideration of that finding as traffic has increased with the continued commercial development of Friendship Heights. Request has been approved. Awaiting implementation/installation. Partial thank you.

6. Restricted Parking signs on the North side of Van Ness between 43rd and 42nd Streets, NW and between Nebraska and Wisconsin Avenue, NW.

These signs were apparently removed during reconstruction of Van Ness Street and have not been replaced or have been rendered illegible due to age. Without signs prohibiting parking between 4:00 PM and 6:30 PM these blocks are dangerous during rush hour and are filled with Virginia and Maryland commuters.

No action as far as I know.

7. 42nd and Yuma Streets, NW

42nd Street between Albemarle and Van Ness Streets, NW is a traffic and pedestrian problem. It serves as a cut through to Wisconsin Avenue, NW from Nebraska Avenue, NW, thus avoiding Tenley Circle. Janney School, IONA House and St Columba's church all generate pedestrian traffic at 42nd and Albemarle Streets, NW, one block from this intersection. We are seeking assistance with reducing traffic on this section of 42nd Street, NW.

No specific action. Part of overall study of traffic calming measures needed.

New Issues/Requests

8. Development and Enforcement of Truck Management Plan

The District desperately needs a truck management plan. Truck use of residential streets to avoid congestion on major arterials has become excessive and a major detraction from our quality of life. Most residential streets were not built to handle the weights of the trucks which now routinely travel them. This results in destruction of the roadbed and damage to houses from the vibrations caused by the inadequate roadbed. Truck use of residential streets also brings in noise and air pollution.

In addition to the everyday inappropriate truck use of residential streets, an even greater concern to residents of Friendship Heights, American University and Tenleytown is the coming onslaught of commercial development on the Maryland side of Friendship Heights. Without a truck management plan in effect, and strict enforcement, construction trucks will begin plying their way through our neighborhoods beginning this Fall when the first project is slated to start. Construction of the three projects on the Maryland side of Friendship Heights is just the first salvo in a major construction boom in this area. Both the Washington Clinic site at the intersection of Western Avenue and Military Road and the WMATA bus garage project at Jenifer and Wisconsin are slated to begin within the next three years. And, in Tenleytown both the Hechinger's project and the townhouse project at Albemarle and Nebraska should be on-line shortly. We need our government to protect us from the negative traffic and health impacts of all this construction in a small area over a short period of time. A truck management plan is a first step.

9. Fessenden Street between River Road and Nebraska Avenue, NW

Fessenden Street has become a route of choice for traffic, especially trucks and uncovered DPW leaf trucks. Fessenden Street is already posted with 25mph speed limit signs and No Thru Trucks over 1 ½ tons. Thus, we are requesting increased enforcement and that additional measures be considered to address this problem.

10. Installation of Speed Humps/Bumps on 43rd Street, NW

This request was made in June 1998. However, we were informed that the District did not install speed bumps, but was going to do a pilot project. We asked to be considered for the pilot project. The pilot project never took place and we dropped our request. However, the DPW is now experimenting with mobile/movable/temporary speed bumps and we request that speed bumps be installed on the 5300 block of 43rd Street, NW in an effort to reduce the speeding and cut through traffic on this residential street.

*This analysis was provided for in Zoning Order 518, Case No. 85-20, Section 32b as part of the PUD granted for the development of Square 1661 [bounded by Wisconsin Ave., Western Ave., Jenifer St. and 43rd St. NW]. In fact, the PUD was contingent upon the performance of a comprehensive traffic study by the Department of Public Works

“...To include but not be limited to Western Avenue on the north, 41st Street and Reno Road on the east, Fessenden Street on the south, and River Road/Western Avenue on the west.” [ZC Order 518, Case No. 85-20, Section 32b]

The above referenced section further stipulates that the costs of the study were to be shared by all developers of Square 1661 [Section 32b] and acknowledges the agreement of the developers to perform a traffic study of the above referenced area after forty percent (40%) of the project was completed. [Sections 22 and 24] To our knowledge,

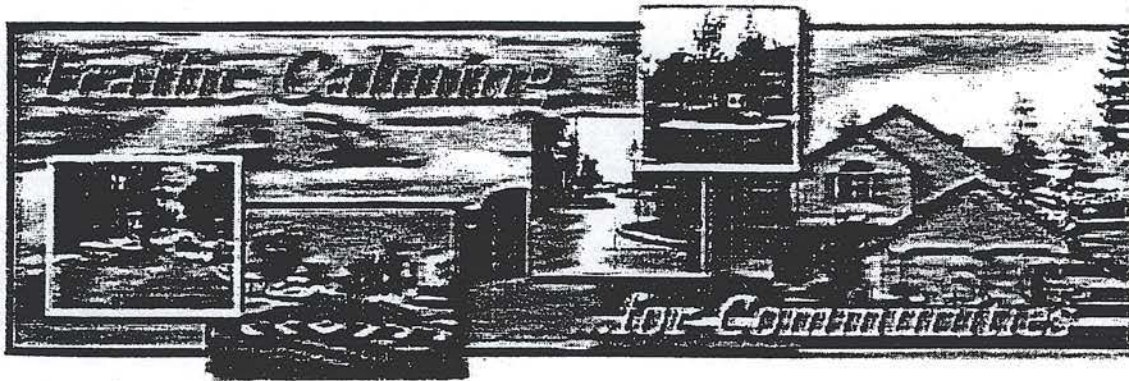
this requirement has not been met although the project is one hundred percent (100%) complete. The developer of the final parcel, Dan McCaffrey, maintains that this requirement was met when he presented a traffic analysis as part of his development proposal for the final parcel in Square 1661. We do not agree.

The area covered by Zoning Order 518 is considerably larger than what we have requested. However, we concur that any traffic analysis should include the residential areas on both sides of Wisconsin Avenue, NW between Western Avenue, NW and Fessenden Street, NW.

ATTACHMENT

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TRAFFIC CALMING MEASURES
EXTRACTS FROM ITE – TRAFFIC CALMING WEB-SITE



- Calming Measures
- Library
- Discussions
- Seminar Materials
- Selected Reports
- Other Links

Traffic Calming is the combination of mainly physical measures that reduce the negative effects of motor vehicle use, alter driver behavior and improve conditions for non-motorized street users.¹

Traffic calming goals include:

- increasing the quality of life;
- incorporating the preferences and requirements of the people using the area (e.g., working, playing, residing) along the street(s), or at intersection(s);
- creating safe and attractive streets;
- helping to reduce the negative effects of motor vehicles on the environment (e.g., pollution, sprawl); and
- promoting pedestrian, cycle and transit use.¹



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Traffic calming objectives include:

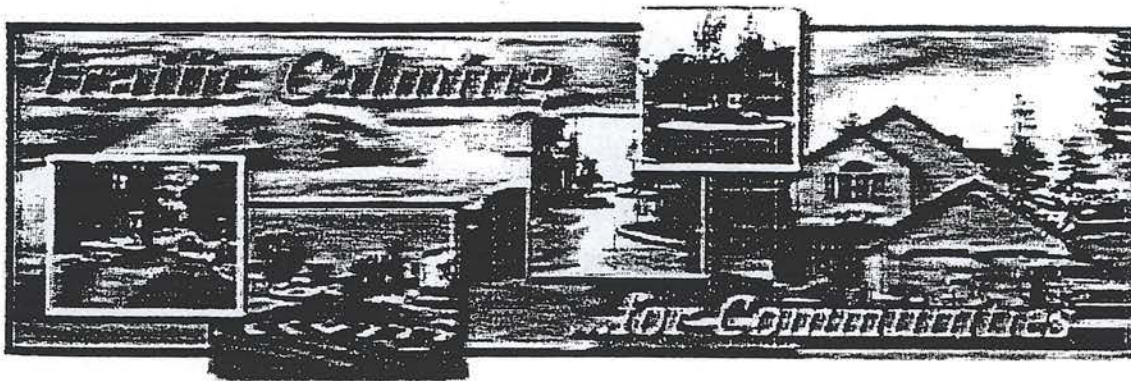
- achieving slow speeds for motor vehicles,
- reducing collision frequency and severity,
- increasing the safety and the perception of safety for non-motorized users of the street(s),
- reducing the need for police enforcement,
- enhancing the street environment (e.g., street scaping),
- encouraging water infiltration into the ground,
- increasing access for all modes of transportation, and
- reducing cut-through motor vehicle traffic.¹

¹Lockwood, Ian. *ITE Traffic Calming Definition*. ITE Journal, July 1997, pg. 22.

This Traffic Calming Web site was developed by the Institute of Transportation Engineers with financial support from the Federal Highway Administration in the interest of information exchange. The contents should not be construed as an endorsement. The United States Government assumes no liability for its contents or use thereof.

Please note that some of the resources available on the Traffic Calming site are in large files and may take a significant amount of time to download.

An ITE/FHWA Traffic Calming CD-ROM that includes sections of this Web site is being produced to facilitate the viewing of large files. The CD will be available for purchase by the end of 1999.



Traffic Calming Measures - Speed Hump

Description:

- rounded raised areas of pavement typically 12 to 14 feet in length
- often placed in a series (typically spaced 300 to 600 feet apart)
- sometimes called road humps or undulations

Applications:

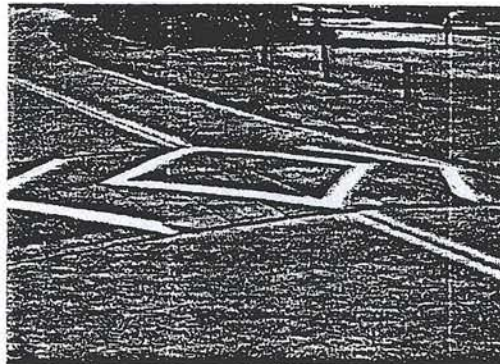
- residential streets
- not typically used on major roads, bus routes, or primary emergency response routes
- midblock placement, not at an intersection
- not on grades greater than 8 percent
- work well with curb extensions



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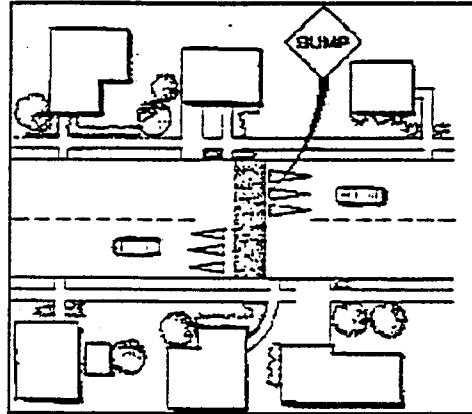
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Design/Installation Issues:

- typically 12 to 14 feet in length; other lengths (10, 22, and 30 feet) reported in practice in U.S.
- speed hump shapes include parabolic, circular, and sinusoidal
- hump heights range between 3 and 4 inches with trend toward 3 - 3 ½ inches maximum

- difficult to construct precisely; may need to specify a construction tolerance (e.g. $\pm 1/8$ inch) on height
- often have signage (advance warning sign before first hump in series and warning sign or object marker at hump)
- typically have pavement marking (zigzag, shark's tooth, chevron, zebra)
- taper edge near curb to allow gap for drainage
- some have speed advisories
- bicyclists prefer that it not cover or cross a bike lane



Potential Impacts:

- no effect on non-emergency access
- speeds determined by height and spacing; speeds between humps have been observed to be reduced between 20 and 25 percent on average
- based on a limited sample of sites, typical crossing speeds (85th percentile) of 19 mph have been measured for 3½ inch high, 12 foot humps and of 21 mph for 3 inch high, 14 foot humps; speeds have been observed to rise to 27 mph within 200 feet downstream
- speeds typically increase approximately 0.5 mph midway between humps for each 100 feet of separation
- studies indicate that traffic volumes have been reduced on average by 18 percent depending on alternative routes available
- studies indicate that collisions have been reduced on average by 13 percent on treated streets (not adjusted for traffic diversion)
- most communities limit height to 3-3½ inches, partly because of harsh ride over 4-inch high humps
- possible increase in traffic noise from braking and acceleration of vehicles, particularly buses and trucks

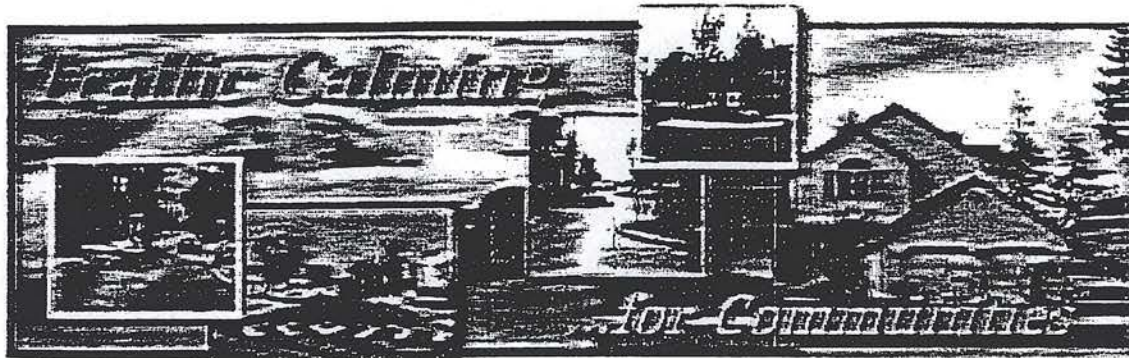
Emergency Response Issues:

- Concern over jarring of emergency rescue vehicles
- Approximate delay of between 3 and 5 seconds per hump for fire trucks and up to 10 seconds for ambulance with patient

Typical Cost:

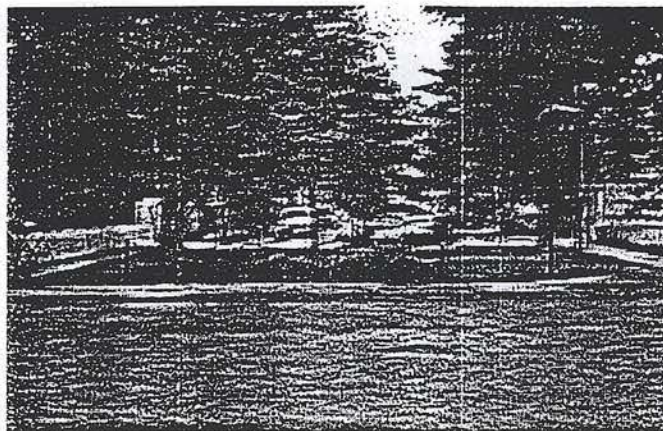
- Approximately \$2,000 (1997 dollars)

For additional detail, refer to ITE's Recommended Practice entitled *Guidelines for the Design and Application of Speed Humps*. Visit the [ITE Bookstore](#) for more information about this publication.



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Traffic Calming Measures - Closure



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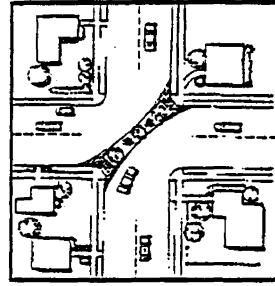
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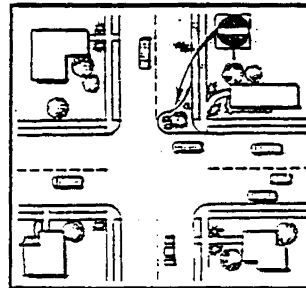
- closures are typically applied only after other measures have failed or been determined to be inappropriate
- for all types of closures, provisions are available to make diverters passable for pedestrians and bicyclists
- often used in sets to make travel through neighborhoods more circuitous - typically staggered internally in a neighborhood, which leaves through movement possible but less attractive than alternative (external) routes
- closures have been used as a crime prevention tool

Descriptions:

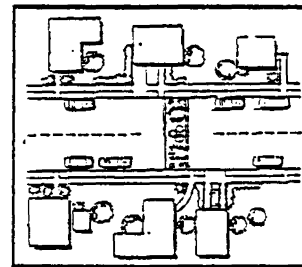
Diagonal diverters are barriers placed diagonally across an intersection, blocking through movement; they are sometimes called full diverters or diagonal road closures



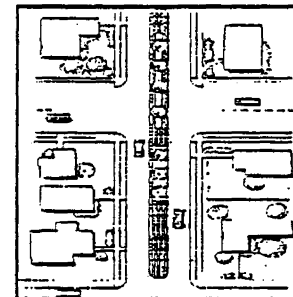
Half closures are barriers that block travel in one direction for a short distance on otherwise two-way streets; they are sometimes called partial closures, entrance barriers, or one-way closures (when two half-closures are placed across from one another at an intersection, the result is a semi-diverter)



Full-street closures are barriers placed across a street to completely close the street to through-traffic, usually leaving only sidewalks open; they are sometimes called cul-de-sacs or dead-ends



Median barriers are raised islands in the centerline of a street and continuing through an intersection that block the left turn movement from all intersection approaches and the through movement at the cross street

**Design/Installation Issues:**

- there may be legal issues associated with closing a public street
- can be placed at an intersection or midblock
- barriers may consist of landscaped islands, walls, gates, side-by-side bollards, or any other obstruction that leave an opening smaller than the width of a passenger car

Potential Impacts:

- concern over effects on emergency response, street network connectivity and capacity, and parallel local streets that carry diverted traffic
- may divert significant traffic volumes
- no significant effect on vehicle speeds beyond the closed block

3-6

Emergency Response Issues:

- half closures allow a higher degree of emergency vehicle access than full closures or diagonal diverters
- all three types of closures can be designed to allow emergency vehicle access

Typical Cost:

- costs range between \$2,000 for a simple half-closure and \$35,000 for highly-landscaped diagonal diverter

[SPEED HUMP](#) | [SPEED TABLE](#) | [RAISED INTERSECTION](#) | [CLOSURE](#)

[NEIGHBORHOOD TRAFFIC CIRCLE](#) | [CHICANE](#) | [CHOKER](#) | [CENTER ISLAND NARROWING](#)

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Suburban Residential Traffic Calming

BY C. EDWARD WALTER

Traffic calming or slowing is frequently referred to as reverse traffic engineering. Instead of easing and speeding traffic flow, traffic calming uses geometric changes or designs that passively regulate travel speed. Europeans take traffic calming very seriously: In residential areas they try for 20 miles per hour (mph) speeds to reduce injury severity. In commercial areas, where there are shared traffic zones between vehicles and pedestrians, they strive to achieve speeds of 10 mph to 15 mph. Traffic calming measures are generally retrofitted onto existing streets. However, having once recognized the need for traffic calming, these ideas have led to new hierarchies of residential street classifications and design principles in England and Australia.¹

In the Washington, D.C.-Baltimore, Md., suburban areas, postwar residential development frequently was modeled along the Columbia, Md., residential plan of long curving residential streets with numerous cul-de-sacs. These nonlinear street plans have led to longer trip lengths. At the same time these new residential patterns were developing, local governments developed minimum design standards setting width, curvature and frequently vertical grades based on street

classification. In Howard County, Maryland, which lies between Baltimore and Washington, a 35 mph design speed was used for residential streets with a 30 ft to 36 ft roadway width. Frequently 2,400-ft to 3,000-ft long cul-de-sac streets were approved; it is little wonder that despite 25 mph speed limits, 85th percentile speeds of 38 mph to 40 mph are routine in such residential areas.

Residential speeding is a major community concern. Speeding has become a way of life for many; although residents may pass their own property within the speed limit, they have no hesitation in zipping past their neighbors' property as fast as possible. Police with limited resources undertake periodic enforcement on request, but such enforcement efforts are spotty at best. These situations have given rise to the development and success of traffic calming measures in existing residential neighborhoods.

Traffic engineers in the metropolitan counties surrounding Baltimore and Washington have formed the Maryland Traffic Engineers Council to solve joint problems. Several of the jurisdictions have been working with community groups on traffic calming measures. In 1992, the council formed a traffic calming subcommittee to share information on ways

to reduce speed in suburban residential communities. This article presents the results of that effort.

Vertical Alignment Modification

Vertical changes to roadway geometry offer guaranteed speed reduction.¹ Speed humps, developed in England and sometimes referred to as "insomniac policemen," control speed by adjusting the height and spacing of the hump. They introduce a vertical acceleration factor to the vehicle. The Watt's Profile Speed Hump, as developed in England, is a portion of a 12 ft-long cylinder rising 3 inches (in) in height (see Figure 1). In 1990, Howard County placed seven of these humps on Baltimore Avenue near Laurel, Md. The 85th percentile speed



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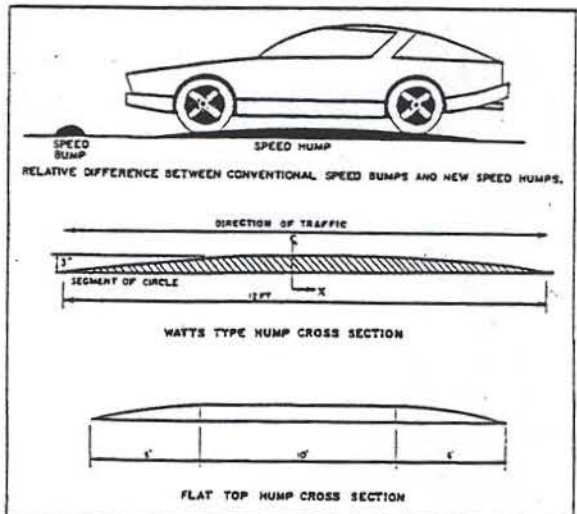


Figure 1. Speed hump.

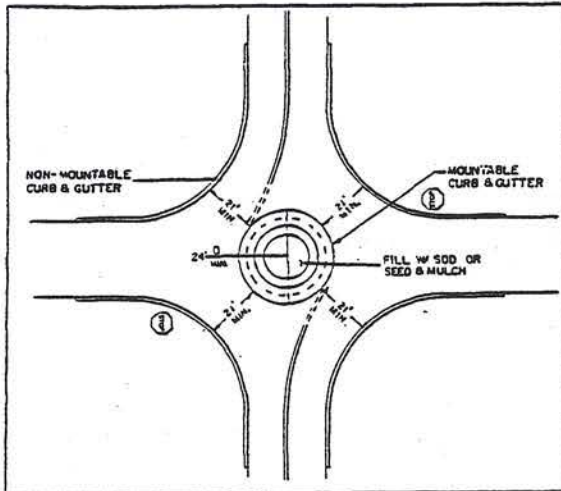


Figure 2. Traffic circle.

before placement was 38 mph and the speed limit 25 mph. Immediately afterward (and continuing to the present day), 85th percentile speeds were 27 mph to 29 mph between humps and 15 mph at each hump. The series of humps replaced two multiway stops and had the concurrence of 75 percent of residents. There have been no accidents in the four years since the humps were placed vs. four accidents in the two years immediately before hump construction.

A year later Howard County placed four humps on Dogwood Drive, a narrow residential street between two arterial roadways. The 85th percentile speed before construction of the humps was 40 mph; after construction, it dropped to 28 mph. There also has been a 24 percent reduction in traffic volumes on Dogwood Drive as vehicles diverted to other routes.

The Watt's Profile Speed Hump frequently has been limited in its application to roadways with 3,000 vehicles per day (vpd) or fewer, although Dallas permits its use on streets handling up

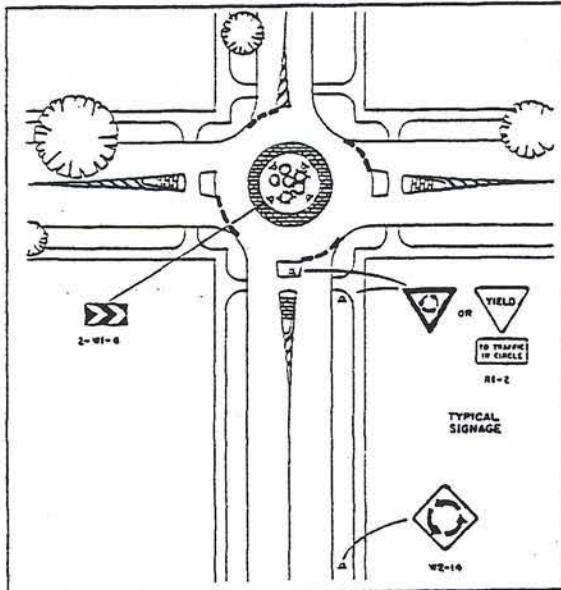


Figure 3. Roundabout.

to 8,000 vpd.³ A flat top speed hump 22-ft long with a center 10-ft flat section was pioneered in the United States by Seminole County, Florida,⁴ where it has been used on collector roads with more than 12,000 vpd. In England, flat top humps are used on collector roads and also frequently serve as pedestrian crossings.

Two flat top humps were installed in 1993 on Shaker Drive in Howard County, where the 85th percentile speed was reduced from 43 mph to 29 mph. Remarkably, the speed between humps and at humps are essentially the same. (Seminole County found similar operating experience.) This characteristic has led to its adoption in Howard County as the preferred hump design.

The City of College Park, Md., recently completed construction of four raised pedestrian crossings as part of a road rehabilitation. The cross section is similar to a flat top speed hump with a 3-in rise. The city added visual impact to the crossings by constructing the flat top portion with concrete and brick.

The Institute of Transportation Engineers has published a proposed recommended practice on speed humps. It was prepared by the Technical Council Speed Humps Task Force, which is currently evaluating comments before a final decision on adoption.⁵

Horizontal Alignment Changes

Traffic Circles and Roundabouts

The City of Seattle, Wash., pioneered the U.S. concept of installing small traffic circles in existing intersections to slow traffic through residential areas. From a small beginning in 1978, Seattle has now constructed more than 800 traffic circles on residential streets.⁶ Their pioneering experience has been adopted elsewhere, including suburban Maryland counties. Traffic circles have been installed in Maryland as both temporary and permanent installations. Some of the temporary installations have been redesigned as permanent ones and some have been removed at the request of residents. Anne Arundel and Montgomery counties have each installed several circles (see Figure 2).

The success of traffic circles in reducing residential travel speeds is related to the amount of horizontal deflection required as a vehicle moves around the circle.⁷ Both Anne Arundel and Montgomery counties have designed considerable deflection in their circles, effectively prohibiting intersection traffic from traveling more than 18 mph to 20 mph. Operationally, side roads stop for traffic on the main route. Most left-turning cars will make a 270-degree turn around the circle. Some of the circles have been constructed with a mountable curb and 4 ft concrete ring to accommodate trucks. However, large trucks cannot operate within the turning radius of the circles and therefore make left turns in front of the circle. This could be considered a dangerous practice except volumes are low and the circles are designed with good visibility.

Because of the problem of trucks turning in front of the circles, Prince Georges County has constructed several roundabouts. Roundabouts are similar to traffic circles but have splitter islands that effectively prevent trucks from turning in front of the circle.⁸ Generally the islands are formed with concrete or asphalt curb, but occasionally they are painted (see Figure 3). Operationally, traffic entering a roundabout yields to traffic in the circle, and there is no major road/minor road consideration as at normal intersections. Roundabouts large enough to accommodate trucks must have a total inscribed diameter of approximately 100 feet (ft). This is frequently difficult to achieve in residential intersections without acquiring additional right-of-way.

Both roundabouts and traffic circles are very effective as intersection traffic calming devices. They have been used with considerable success in Montgomery County for isolated intersection calming, where 85th percentile speeds have been reduced from

more than 40 mph to 20-22 mph. Along a residential route they must be repeated at regular intervals to maintain "calm" traffic speeds throughout. Circles have also been constructed between intersections to calm traffic.

Roadway Restrictions

Roadway restrictions can also be effective traffic calming devices. Many residential streets are considerably wider than required. On such streets, cars parked opposite each other in mid-block act as a temporary roadway restriction. This phenomenon can be created by constructing pedestrian peninsulas at intersections or chokers at mid-block (see Figure 4). The pavement width between chokers can be built for one traffic lane or two. Likewise the restriction can be either parallel to the travel way or twisted to the direction of travel (see Figure 5, next page). Downtown Market Street in York, Pa., is an excellent example of a one-way street narrowed to two lanes with a twist introduced at each end of a long block in order to reduce travel speeds.

Medians also can be used for road narrowings. Medians 20 ft to 50 ft or more in length have been constructed in Anne Arundel County in advance of intersections. Roadway widths each side of the medians are 11 ft. However, unless cars regularly park along the street, median construction by itself does little to reduce traffic speed. To compensate for this, Anne Arundel County is constructing small bulb-outs (peninsula projections into the roadway) to force drivers to make a lateral deflection as they approach and enter median-calmed area. Studies indicate that islands have reduced 85th percentile speeds by 2 mph to 5 mph. Islands without lateral deflection have the least speed reduction.

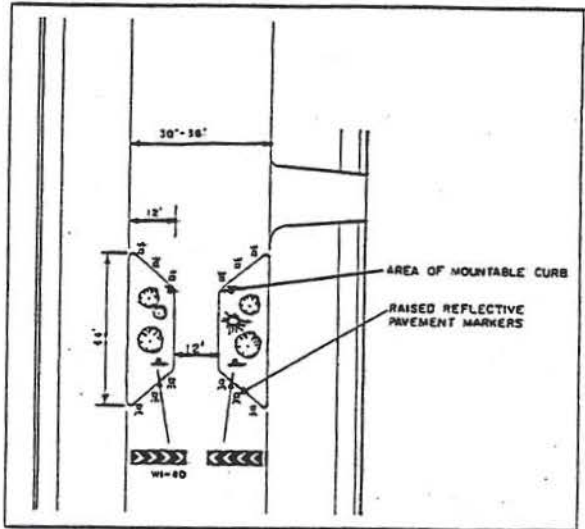


Figure 4. Parallel choker.

A variation on roadway restrictions has been constructed at two Prince Georges County intersections, where offset small medians force vehicles to go through a lateral deflection in one direction of travel only. In the next block a similar median forces similar deflection for the other direction of traffic.

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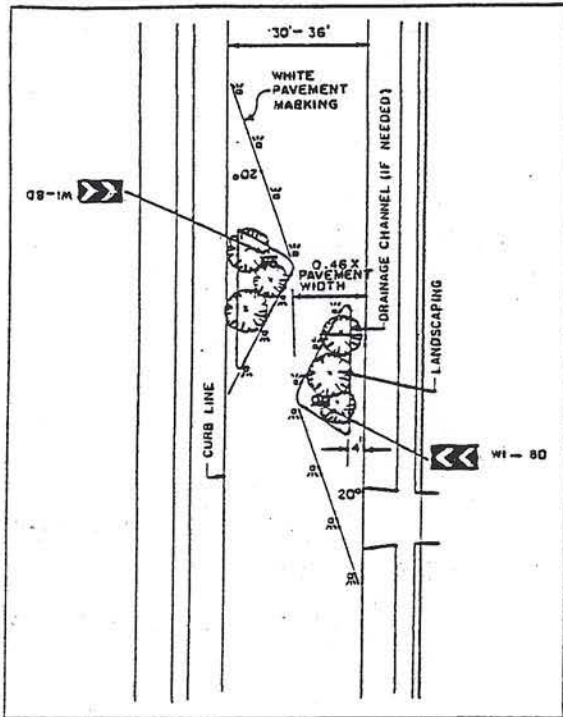


Figure 5. Twisted choker.

parking lane lines without centerline striping on residential streets. This visually narrows the available roadway and has resulted in reductions of 3 mph to 4 mph in vehicle travel. This narrowing can be reinforced with several pedestrian peninsulas and speed humps. Such combinations of traffic calming measures are used extensively in Europe to achieve desired speed reductions.

Traffic Calming Criteria

Tentative criteria have been developed governing the installation of traffic calming devices. Roadways considered for traffic calming must be primarily residential streets with a majority of residential homes and driveways fronting on the street. Existing 85th percentile speeds must be 10 mph or more above the speed limit and there must be 1,000 vpd or more using the residential street. Each of the metropolitan jurisdictions study traffic calming measures after neighborhood complaints. They then work with the community to quantify and define the problem, and specific recommendations are made to the community. Maryland has found resident acceptance is paramount, and is best facilitated by working with a traffic committee from the community, which can then sell the project to the community at large. Howard County requires 60 percent of residents to approve recommendations by petition before construction.

Conclusions

Traffic calming can be an effective means of reducing speeds in established residential neighborhoods. Speeding generally occurs along the entire length of a street, may extend over several streets, and requires the regular repetition of traffic calming measures. The specific measures to be used for traffic calming are determined by roadway characteristics, cost restraints and resident acceptance. Speed reductions ranging from 3 mph to 24 mph have been obtained depending on the specific traffic calming devices utilized. Regular repetition of calming devices at 400 ft to 600 ft intervals is required to maintain slower speeds along the length of a street.

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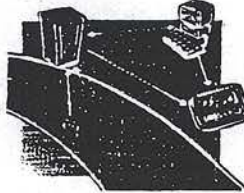
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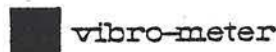
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August 2002

District of Columbia Zoning Commission
Washington, DC

**RE: 5401 Western Avenue Application for a Consolidated Planned Unit Development
Economic Impact Analysis**

Dear Members of the Zoning Commission:

Bolan Smart Associates has been asked to analyze the potential economic impact on the District of Columbia of constructing the proposed an apartment building totaling some 200 units. Based on evaluating a 100% completed project, assuming 200 apartments, a 3,000 square feet day care facility, plus requisite parking, our findings are summarized as follows:

1. **Direct Annual District Tax Revenue:** The principal direct tax revenues to the District of Columbia resulting from the completion of 5401 Western Avenue -- calculated in \$2002 per the attached Table 2, ANNUAL DIRECT DC TAX REVENUE -- total approximately \$1,936,800 per year. The primary components of this sum are estimated to be comprised of:
 - a) \$544,300 per year in real estate taxes, based on a finished property valuation of \$56,700,000 (valued @ \$300 per rentable square foot / \$255 per gross square foot for apartments);
 - b) \$1,031,600 per year in new DC resident income taxes (based on an average required household gross income of \$98,300 to qualify to rent @ 30% rent to income ratios);
 - c) \$275,900 per year in apartment based new DC resident retail sales tax revenues, attributable to \$3,679,000 in DC based taxable sales (65% DC capture of new DC resident retail sales);
and
 - d) \$85,000 per year in new DC resident related use taxes and fees (apartment building operation's, resident DMV fees, utility and telecommunications fees, etc.).

2. **One-Time Construction Related Benefits**: The combination of property transfer fees and significant mortgage debt recordation fees associated with the proposed land sale for development, coupled with development processing fees and permits, could generate well in excess of \$600,000 of direct District of Columbia fee revenues during the early stages of development. In addition, close to 150 direct construction jobs are estimated to be created as part of a two year, \$34+ million construction budget. (See Table 1 for estimated job impacts.) The economic multipliers directly benefiting the District associated with this size of construction expenditure -- while not explicitly quantified as part of this report -- can be very substantial.

3. **Additional Project Related DC Residents**: Per a broad based District goal, the proposed apartment building should result in the addition of a valuable number of new, relatively high income residents to the District. By creating additional supply of highly desired apartment units at this location, not only will new residents currently living outside of the District be attracted to relocate, but those existing DC residents that choose to relocate will free up badly needed inventory for other prospective DC residents. We estimate that the net effect of developing new homes for the approximately 288 residents (1.5 persons per household) projected for 5401 Western Avenue would be to facilitate the equivalent of a 259 person increase in the District's population, representing 90% of the building's population (housed in 173 units), of which 90% of these households (156) are assumed to be taxpayers (net new taxpaying households for the buildings equates to 81%).

4. **Employment Benefits**: While not the most directly important aspect of the economic impact of the proposed project, there are nonetheless a range of employment benefits which accrue from the completion of a mixed use apartment development at 5401 Western Avenue. As portrayed on the attached Table 1, these include the creation of an estimated 16 direct apartment and day care facility related jobs. This job generation is in addition to the 147 construction related jobs estimated to be created covering an approximate two-year construction period.

5. **Neighborhood Enhancement**: Apart from any street oriented and security related enhancements resulting from the higher use of the currently underdeveloped existing Washington Clinic site, the proposed development will accrue a number of business benefits to the Washington side of Western Avenue. The vitality of the retail offerings and the hotel located near to 5401 will benefit not only from the combination of resident and visitor traffic generated but will be enhanced as well by the visual details and quality 24 hour management of the proposed project.

6. **Net Washington Clinic Relocation Benefits**: Given the expectation of the Washington Clinic relocating elsewhere within the District of Columbia, there should be no net loss of existing DC revenues currently associated with this operation. In practice, part of the Washington Clinic proceeds realized from redeveloping the existing site that are applied to build anew elsewhere should in fact add value to the recipient location.

(If for purposes of statistical analysis, it was assumed that the current Washington Clinic use closed down, or relocated outside of the District, the loss of direct tax revenues accruing to the District of Columbia would be minimal compared with the proposed project. The Clinic property is currently assessed at a minor fraction of the estimated value of the new project (\$2.0 million, generating less than \$40,000 per year in real estate tax revenues), and imparts virtually none of the extensive DC higher income resident expenditure benefits onto the

District economy that a new luxury apartment development would accrue. Assuming an average additional DC direct tax revenue ratio of \$1.50 per square foot of generic office space – akin to the existing 30,000 gross square foot Clinic building – would total to \$45,000 per year in District tax receipts comprised of business profit taxes, personal property taxes, utility and telecommunications fees, and other office related operating licenses and fees. Liberally extrapolated to approximate \$100,000 per year in direct DC tax revenues derived from the existing office use of the property means that the existing use generates less than 5% of the equivalent direct DC tax revenues expected from the proposed apartment use.)

7. **Existing Matter-of-Right Benefits:** Applying the same basic economic factors in an analysis of a matter-of-right apartment building of between 72 and 125 units (PUD overlay) results in District revenue benefits being reduced generally in proportion to the decreased size of the development. As illustrated in Tables 3 and 4, assuming an 82-unit apartment building is built under identical income assumptions as the proposed 200-unit development, and net of the 3,000 day care center, the projected annual District tax revenue comes in at \$814,300, or 58% lower than that projected for the proposed development. Were a larger matter-of-right building to be developed under possible PUD provisions encompassing closer to 125 apartments units, the net annual tax revenues would be approximately 45% lower than under the proposed use scenario.

8. **Summary:** Depending on the matter-of-right development scenario, and more or less regardless of the fixed economic input assumptions, the proposed development has the potential of doubling the District of Columbia positive revenue impacts when compared with a matter-of-right development. Adjusting for a target margin of error typical to this time of analysis of up to 20% between the projected overall revenues and those actually achieved indicates that the minimum net annual revenue gain to the District of achieving the proposed project could be on the order of \$650,000 to \$975,000 per year.

DC Zoning Commission
August 2002
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We hope this overview and the attached tables are helpful in framing the magnitude of economic impact that the completion of 5401 Western Avenue would have on the District of Columbia.

Sincerely,

Eric Smart
Principal, Bolan Smart Associates, Inc.

Table 1 - Proposed Consolidated PUD

**ECONOMIC IMPACT SUMMARY - \$2002
5401 WESTERN AVENUE, WASHINGTON, DC**

Direct Annual District Tax Revenues		<u>% of total</u>
1) Real Estate Tax	\$544,320	28%
2) New DC Resident Income Tax	\$1,031,601	53%
3) New DC Resident Retail Sales Tax	\$275,943	14%
4) Other New DC Resident Use Taxes and Fees	\$84,905	4%
5) Net Additional DC Retail Sales Tax Not Related To New Residents	\$0	0%
6) Parking Revenue Tax (commercial related)	<u>\$0</u>	<u>0%</u>
7) Total Direct Annual District Tax Revenue	\$1,936,769	100%

One-time District Revenue

8) Mortgage Recordation (1.1%) and Property Transfer Fees (1.1%)	\$500,000+
9) Development Fees & Permits	\$100,000+
10) Construction Related Sales Tax	not calculated

Additional Project Related DC Residents

11) Estimated Average Project Household Size	1.5	persons
12) Average Occupied Apartment Units (@ 96% occupancy)	192	units
13) Total Additional DC Residents @ 100% Net Population	288	persons
14) Total Additional DC Residents @ 90% Net New Population	259	persons
15) Total Additional DC Households @ 90% Net New Occupied Units	173	households
16) Total Additional Income Taxpaying DC HHs @ 90% Net New Occupied HHs	156	taxpaying HHs

Direct Project Employment

	<u>DC Jobs</u>		<u>DC Residents</u>
16) Direct Apartment FTE Jobs (a)	6	(50%)	3
17) Direct Day Care FTE Jobs	<u>10</u>	(50%)	<u>5</u>
18) Indirect Apartment and Retail FTE Jobs		not calculated	
19) Total Permanent FTE Jobs	16		8
20) Temporary Construction FTE Jobs (b)	<u>147</u>	(35%)	<u>51</u>
21) Indirect Temporary Construction FTE Jobs		not calculated	
22) Total Temporary FTE Jobs	147		51
23) Total FTE Jobs	163		59

Notes:

(a) FTE - full time equivalent job

(b) Construction employment: \$34,000,000 construction cost @ \$150 per gsf x 40% direct labor divided by \$46,000 average annual income, equaling 295 person years divided by 2.0 years for project completion, realizing 147 construction full time equivalent jobs.

**Table 2 - Proposed Consolidated PUD
ANNUAL DIRECT DC TAX REVENUE NET OF MULTIPLIERS - \$2002
5401 WESTERN AVENUE, WASHINGTON, DC**

Project Description

1)	Rental Apartments	200 units	
2)	Average Apartment Size	945 rsf	
3)	Total Apartment RSF	189,000 rsf	
4)	Day Care	3,000 rsf	232,800 gsf
5)	Parking	224 spaces	

Real Estate Tax

		one rsf	total rsf
7)	Apartment Real Estate Value	\$300.00	\$56,700,000
8)	Day Care Real Estate Value	\$0.00	\$0
9)	Parking (included above)		NA
10)	Total Real Estate Value		\$56,700,000
11)	Residential Real Estate Tax	0.96% residential tax rate	\$2.88 \$544,320
12)	Commercial Real Estate Tax	1.85% commercial tax rate	\$0.00 \$0
13)	Total Real Estate Taxes		\$544,320

Residential Direct Tax Revenues

		one apartment	200 apartments
14)	Monthly Rent	\$2.60 per rsf	\$2,457
15)	Required Gross HH Income	333.3% multiple of rent	\$98,270 \$19,654,034
16)	Taxable Income	75.0% of gross	<u>\$73,703</u> <u>\$14,740,526</u>
17)	Taxable Income Adjusted for Average Occupancy	96.0% occupancy	\$70,755 \$14,150,905
18)	Potential DC Income Tax from New DC Residents	9.0% DC tax rate	\$6,368 \$1,273,581
19)	Potential New DC Residents	90.0% new residents	\$5,731 \$1,146,223
20)	Income Tax Revenue Adjusted for Resident Status	90.0% new taxpaying residents	\$5,158 \$1,031,601
21)	New Resident Retail Expenditures Subject to Sales Tax	40.0% of taxable income	\$28,302 \$5,660,362
22)	District of Columbia Resident Sales Capture	65.0% of expenditures	\$18,396 \$3,679,235
23)	DC Average Applicable Sales Tax (a)	7.5% blend of categories	\$1,380 \$275,943
24)	Other Resident Related Use Taxes and Fees (b)	0.6% of taxable income	\$424.53 \$84,905
25)	Personal Property Tax (not applicable) (c)		NA
26)	Total Residential Direct Tax Revenues	\$6,962	\$1,392,449

Other Retail Direct Tax Revenues

		one rsf	total rsf
27)	On-site Taxable Retail Sales (adjusted for 15% vacancy)	\$400 per rsf	\$0.00 \$0
28)	DC Average Applicable Sales Tax (a)	7.5% blend of categories	<u>\$0.00</u> <u>\$0</u>
29)	Sales Tax Net of On-Site Residents	85.0% not on-site consumers	\$0.00 \$0
30)	DC Corporate Tax of Retail Sales	9.9% on 10% profit on gross	<u>\$0.00</u> <u>\$0</u>
31)	Total Retail Related Taxes		\$0.00 \$0
32)	Net New DC Retail Sales Tax Capture	80.0% net new DC sales	\$0.00 \$0

Parking (commercial related)

		one space	0 spaces
33)	Parking Income	\$0 per space per day	
34)		\$0 per space per yr.	\$0 \$0
35)	DC Parking Revenue Tax	12.0% of gross revenue	\$0 \$0

Total Direct Annual Tax Revenue

\$1,936,769

Notes:

- (a) Based on blend of 5.75% sales tax on general goods and services and 10.0% sales tax rate on restaurant related sales.
- (b) Apartment building operations purchases, resident DMV fees, utility and telecommunications fees, other licensing fees and charges.
- (c) Apartment fixtures, etc. included in real property value; residents assumed not to exceed \$50,000 personal property exemption.

Table 3 - Existing Matter of Right

**ECONOMIC IMPACT SUMMARY - \$2002
5401 WESTERN AVENUE, WASHINGTON, DC**

Direct Annual District Tax Revenues		<u>% of total</u>
1) Real Estate Tax	\$228,867	28%
2) New DC Resident Income Tax	\$433,752	53%
3) New DC Resident Retail Sales Tax	\$116,024	14%
4) Other New DC Resident Use Taxes and Fees	\$35,700	4%
5) Net Additional DC Retail Sales Tax Not Related To New Residents	\$0	0%
6) Parking Revenue Tax (commercial related)	<u>\$0</u>	<u>0%</u>
7) Total Direct Annual District Tax Revenue	\$814,343	100%

One-time District Revenue

8) Mortgage Recordation (1.1%) and Property Transfer Fees (1.1%)	\$250,000+
9) Development Fees & Permits	\$75,000+
10) Construction Related Sales Tax	not calculated

Additional Project Related DC Residents

11) Estimated Average Project Household Size	1.5	persons
12) Average Occupied Apartment Units (@ 96% occupancy)	79	units
13) Total Additional DC Residents @ 100% Net Population	118	persons
14) Total Additional DC Residents @ 90% Net New Population	106	persons
15) Total Additional DC Households @ 90% Net New Occupied Units	71	households
16) Total Additional Income Taxpaying DC HHs @ 90% Net New Occupied HHs	64	taxpaying HHs

Direct Project Employment

	<u>DC Jobs</u>		<u>DC Residents</u>
17) Direct Apartment FTE Jobs (a)	4	(50%)	2
18) Direct Day Care FTE Jobs	<u>0</u>	(50%)	<u>0</u>
19) Indirect Apartment and Retail FTE Jobs		not calculated	
20) Total Permanent FTE Jobs	4		2
21) Temporary Construction FTE Jobs (b)	<u>130</u>	(35%)	<u>46</u>
22) Indirect Temporary Construction FTE Jobs		not calculated	
23) Total Temporary FTE Jobs	<u>65</u>		<u>46</u>
24) Total FTE Jobs	69		48

Notes:

(a) FTE - full time equivalent job

(b) Construction employment: \$15,000,000 construction cost @ \$150 per gsf x 40% direct labor divided by \$46,000 average annual income, equaling 130 person years divided by 2.0 years for project completion, realizing 65 construction full time equivalent jobs.

Table 4 - Existing Matter of Right
ANNUAL DIRECT DC TAX REVENUE NET OF MULTIPLIERS - \$2002
5401 WESTERN AVENUE, WASHINGTON, DC

Project Description

1)	Rental Apartments	82 units	
2)	Average Apartment Size	969 rsf	
3)	Total Apartment RSF	79,468 rsf	96,912 gsf
4)	Day Care	0 rsf	
5)	Parking	90 spaces	

Real Estate Tax

		one rsf	total rsf
7)	Apartment Real Estate Value	\$300.00	\$23,840,352
8)	Day Care Real Estate Value	\$0.00	\$0
9)	Parking (included above)		NA
10)	Total Real Estate Value		\$23,840,352
11)	Residential Real Estate Tax	0.96% residential tax rate	\$2.88 \$228,867
12)	Commercial Real Estate Tax	1.85% commercial tax rate	\$0.00 \$0
13)	Total Real Estate Taxes		\$228,867

Residential Direct Tax Revenues

		one apartment	82 apartments
14)	Monthly Rent	\$2.60 per rsf	\$2,520
15)	Required Gross HH Income	333.3% multiple of rent	\$100,778 \$8,263,829
16)	Taxable Income	75.0% of gross	<u>\$75,584</u> <u>\$6,197,872</u>
17)	Taxable Income Adjusted for Average Occupancy	96.0% occupancy	\$72,560 \$5,949,957
18)	Potential DC Income Tax from New DC Residents	9.0% DC tax rate	\$6,530 \$535,496
19)	Potential New DC Residents	90.0% new households	\$5,877 \$481,947
20)	Income Tax Revenue Adjusted for Resident Status	90.0% new taxpaying residents	\$5,290 \$433,752
21)	New Resident Retail Expenditures Subject to Sales Tax	40.0% of taxable income	\$29,024 \$2,379,983
22)	District of Columbia Resident Sales Capture	65.0% of expenditures	\$18,866 \$1,546,989
23)	DC Average Applicable Sales Tax (a)	7.5% blend of categories	\$1,415 \$116,024
24)	Other Resident Related Use Taxes and Fees (b)	0.6% of taxable income	\$435.36 \$35,700
25)	Personal Property Tax (not applicable) (c)		NA
26)	Total Residential Direct Tax Revenues	\$7,140	\$585,476

Other Retail Direct Tax Revenues

		one rsf	total rsf
27)	On-site Taxable Retail Sales (adjusted for 15% vacancy)	\$400 per rsf	\$0.00 \$0
28)	DC Average Applicable Sales Tax (a)	7.5% blend of categories	<u>\$0.00</u> <u>\$0</u>
29)	Sales Tax Net of On-Site Residents	85.0% not on-site consumers	\$0.00 \$0
30)	DC Corporate Tax of Retail Sales	9.9% on 10% profit on gross	<u>\$0.00</u> <u>\$0</u>
31)	Total Retail Related Taxes		\$0.00 \$0
32)	Net New DC Retail Sales Tax Capture	80.0% net new DC sales	\$0.00 \$0

Parking (commercial related)

		one space	0 spaces
33)	Parking Income	\$0 per space per day	
34)		\$0 per space per yr.	\$0 \$0
35)	DC Parking Revenue Tax	12.0% of gross revenue	\$0 \$0

Total Direct Annual Tax Revenue

\$814,343

Notes:

- (a) Based on blend of 5.75% sales tax on general goods and services and 10.0% sales tax rate on restaurant related sales.
- (b) Apartment building operations purchases, resident DMV fees, utility and telecommunications fees, other licensing fees and charges.
- (c) Apartment fixtures, etc. included in real property value; residents assumed not to exceed \$50,000 personal property exemption.

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April 24, 2002

VIA HAND DELIVERY

MEMORANDUM

To: Stephen Cochran
 D.C. Office of Planning

From: Steven E. Sher 
 Director of Zoning and Land Use Services

Subject: High Density Residential Development Adjacent to Metro Stations

We have undertaken some further research and analysis regarding residential development in and near Metrorail stations, to support the proposition that it is appropriate to increase the permitted density on the property at 5401 Western Avenue, N.W., currently occupied by the Washington Clinic. That property is within 250 feet of the entrances to the Friendship Heights Metrorail and bus station and is currently zoned R-5-B, which permits a maximum height of fifty feet and a maximum FAR of 1.8. The development proposed for the site would be an apartment house with 200 to 225 units (150 to 170 units per acre) with just over 4.0 FAR. The maximum height proposed is ninety feet at its highest point, stepping down to a height in the range of forty feet on the side where it faces lower density single family housing.

In reviewing this matter we considered:

1. The housing opportunity area designations on the District of Columbia Generalized Land Use Policies Map adopted as part of the Comprehensive Plan;
2. Zoning Commission approval of text amendments and planned unit developments allowing for greater residential density in areas where housing is desired, particularly near Metrorail stations; and

STEVEN E. SHER
DIRECTOR OF ZONING
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HOLLAND & KNIGHT LLP

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3. Policies and approvals of other surrounding jurisdictions, most notably Arlington County in Virginia and Montgomery County in Maryland, which encourage housing near Metrorail stations.

Housing Opportunity Areas

The Comprehensive Plan (§1118.6) describes housing opportunity areas as places "where the District expects and encourages either new housing or rehabilitated housing. These housing opportunity areas are not the only areas where new housing units will become available, but represent locations of significant concentrations. Most Metrorail stations outside the Central Employment Area, and some within, will support additional housing units. The conversion of existing nonresidential buildings for housing and the return of vacant units to the housing market are two (2) additional devices which will result in additional housing units."

The current Generalized Land Use Policies Map identifies twenty-nine housing opportunity areas. Sixteen of those areas are identified by name to mean specific development proposals on specific properties:

- Miller Tract (#1)
- Whitehaven Woods (#3)
- Kelly Miller (#7)
- Ellen Wilson Dwellings (#11)
- Greenleaf Gardens (#12)
- James Creek (#13)
- Arthur Capper (#14)
- Kenilworth/Parkside (#15)
- East Capitol Dwellings (#17)
- Fort Dupont Dwellings (#18)
- Blitz Properties (#20)
- Knox Hill (#21)
- Barry Farms (#22)
- Camp Simms (#23)
- Wheeler Hills Estate (#25)
- Upshur Street Clinic Area (#27)

Thirteen of the areas are more general descriptions of areas where housing is to be encouraged. Seven of these areas are directly at Metrorail stations:

- Tenleytown Metrorail Station Area (#2)
- Columbia Heights (#4)

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Howard Gateway (#5)
Fort Totten (#6)
Mount Vernon Square (#8)
Pennsylvania Quarter (#9)
Wisconsin and Western Avenues, N.W. (#29)

The remaining six areas are not in the direct vicinity of Metrorail stations:

Pennsylvania Avenue, S.E. (#10)
Lincoln Heights (#16)
Benning Terrace (#19)
Congress Park (#24)
Washington Highlands (#26)
Fort Lincoln (#28)

Given the very general nature of the policies for housing priority areas and the wide diversity in the locations of these areas, the nature and character of the surrounding vicinity are the greatest influences in determining appropriate ranges for types and densities of housing to be accommodated.

Approval of Increased Residential Density

The Zoning Commission has taken both across-the-board action and action approving specific projects to increase density for residential development in areas where housing is to be encouraged, particularly in areas having proximity to transit and other locations with strong accessibility characteristics.

The most recent example of a policy change to encourage housing was the amendments to the Downtown Development District to eliminate the restriction on FAR for residential developments in housing priority areas. See, Zoning Commission Orders No. 943 and 943-A. Those amendments allow increased residential density over the maximum FAR normally prescribed in the DD/C-2-C, DD/C-3-C and DD/C-4 zones, subject to the height and lot occupancy limitations. This would allow residential buildings of fourteen stories with FARs exceeding 10.0 or 11.0. The housing priority areas include two housing opportunity areas (Pennsylvania Quarter and Mount Vernon Square) and include Metrorail stations at Archives, Gallery Place and Mount Vernon Square.

The Zoning Commission has also approved planned unit developments with significant residential densities on sites located in housing opportunity areas or

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close to Metrorail stations and which were deemed to be areas where housing was to be encouraged.

- **4725 Wisconsin Avenue at Davenport Street, N.W.** – This PUD involved the rezoning of the subject property from C-2-A to C-2-B for the construction of an apartment building with first floor retail, service and office uses. The site slopes steeply down from 41st Street to Wisconsin Avenue, so measuring the permitted sixty-five foot height from the uphill side resulted in a significantly higher building on Wisconsin Avenue. The project included five townhouse type units in the portion of the building closest to the adjacent single family neighborhood. The project was allowed a maximum FAR of 4.5 and is within the Tenleytown Housing Opportunity Area. (*Zoning Commission Order No. 904, September 13, 1999*)
- **Kennedy-Warren addition at 3133 Connecticut Avenue, N.W.** – This PUD involved the rezoning of the subject property from R-5-D to R-5-E for the construction of an addition to an apartment house with commercial uses on the first floor. The R-5-D District permitted a maximum FAR of 3.5 for apartment house use as a matter-of-right. The PUD approved an overall maximum FAR of 6.29 for the addition and the existing building. The project is located within walking distance of both the Cleveland Park and Woodley Park Metrorail stations and near Metrobus routes. (*Zoning Commission Order Nos. 831, October 15, 1997, and 831-A, December 11, 2000*)
- **The Westbrook Place apartments at 2201 N Street, N.W.** – This PUD involved the rezoning of the subject property from R-5-B to R-5-D for the construction of an apartment house with non-residential uses and the redevelopment of the historic Wardman Building with residential uses. The PUD approved a maximum FAR of 5.66, with not less than 5.16 FAR devoted to residential uses and not more than 0.5 FAR devoted to non-residential uses. The R-5-B District permitted a maximum FAR of 1.8 as a matter-of-right. The project is located approximately four blocks from the Dupont Circle Metrorail station and near numerous Metrobus routes. (*Zoning Commission Order Nos. 690, May 13, 1991, 690-A, September 10, 1991, 690-B, May 11, 1992, and 690-C, August 3, 1992*)
- **The Residences at the Ritz Carlton at 2200 M Street, N.W.** – This PUD involved the rezoning of the subject property from C-2-C to CR for the construction of a hotel, retail and residential project. The C-2-C District permitted a maximum FAR of 6.0 for apartment houses and 2.0 for other structures as a matter-of-right. The PUD approved a maximum FAR of 6.81

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for the project. The project is located within walking distance to both the Foggy Bottom (approximately four blocks) and Dupont Circle (approximately five blocks) Metrorail stations and near numerous Metrobus routes. (*Zoning Commission Order Nos. 833, January 12, 1998, and 855 (September 14, 1998*

- **Mayfair House at 21st and L Streets, N.W.** – This PUD involved the rezoning of the subject property from R-5-D to C-3-C for the construction of a mixed-use, high-rise building containing up to 160 rental apartments with commercial uses on the first floor. At that time, the R-5-D District permitted a maximum FAR of 6.0 for apartment houses and 5.0 for other structures as a matter-of-right. The PUD approved a maximum FAR of 6.97 for the project. The project is located near four Metrorail stations, with the closest being approximately four blocks from the site, and near numerous Metrobus routes. (*Zoning Commission Order Nos. 483, September 8, 1986, and 553, December 3, 1987*)

Surrounding Jurisdictions

We have also reviewed the policies and regulations of other jurisdictions which have Metrorail station areas which are generally programmed for high density development including residential uses

Arlington County has maintained a policy of concentrating higher density development along the Metrorail corridors, particularly the Rosslyn-Ballston corridor, for many years. The Rosslyn-Ballston corridor includes five Metrorail stations: Rosslyn, Court House, Clarendon, Virginia Square and Ballston. The County defines a "metro station area" as the area within approximately a one-quarter mile radius (or 1,320 feet) from the Metrorail station itself, taking into account existing delineations such as streets and blocks. The boundaries of each "metro station area" are shown on the attached maps.

Arlington County has established several mixed use districts that include the Rosslyn-Ballston corridor and allow for higher residential densities than in other areas of the County. The C-O Districts (as detailed on the attached Zoning Ordinance provisions), including C-O-2.5, C-O-A, and C-O Rosslyn, generally permit residential densities up to 6.0 FAR and heights up to 170 feet, depending on the area of the property.

To further increase redevelopment opportunities in the Rosslyn area, the County Board adopted the C-O Rosslyn Zoning District in 1996 as an amendment to the Zoning Ordinance. The Board also adopted a compatible amendment to the

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General Land Use Plan that created a Rosslyn Coordinated Redevelopment District. Properties within the new plan district were eligible for rezoning to the C-O District, and most of Rosslyn is in fact currently zoned C-O. The C-O District permits an FAR of up to 4.8 for multi-family dwellings and a maximum height of 180 feet. The C-O District permits additional density to be obtained, up to a 10.0 FAR and 300 feet, when the County Board finds that the development proposal provides for "important community benefits identified in approved plans for the area." Past improvements that have been considered community benefits include park improvements, public art, landscaping of public areas, and improvement to pedestrian access at metro stations.

The Rosslyn-Ballston corridor continues to be slated for higher levels of development; there are currently 20,692 residential units constructed and approved in the corridor, an overwhelming increase from the 378 units that existed in the corridor during the 1970s. In each of the metro station area General Land Use Plans, the areas surrounding the Metrorail stations are largely planned for high density residential or mixed use development. The Ballston station is the eighth station from Metro Center on the Orange line (Friendship Heights is the seventh station on the Red line from Metro Center) and is approximately the same distance from Downtown as is the subject property.

Many developers have taken advantage of Arlington's increased density opportunities within metro station areas, particularly in the last several years.

- **Liberty Center** – Liberty Center is located on a site bounded by Wilson Boulevard and 9th, North Quincy and Randolph Streets in close proximity to the Ballston Metrorail station. The development consists of 497,054 square feet of office space, 13,600 square feet of retail space, and 513 apartment units at a density of 143 units per acre for the residential portion. The site area is approximately 3.6 acres and the property is zoned C-O-A. The development will replace three 1960s vintage office buildings and a ten-unit apartment building.
- **The Odyssey** – Also recently approved by the County Board is The Odyssey, an almost 320,000 square foot project located two blocks east of the Courthouse Metrorail station. The project will include a 305 to 320 unit, fifteen story apartment building (approximately 179 units per acre) with approximately 6,800 square feet of ground floor retail. This development is also slated to include affordable housing units on-site, and in this case, a density bonus was provided through the County's new affordable housing ordinance, which allowed a twenty-five percent density increase from the

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underlying zoning. The site consists of approximately 1.7 acres and is zoned RA4.8.

- **Jefferson at Clarendon Center** – This site at Washington Boulevard at 10th Street was approved by the County Board for 257 residential units and 14,000 square feet of first floor retail space (approximately 289 units per acre). The site consists of approximately 0.89 acres and is zoned CR. The building will include eleven stories and reach 110 feet in height. The project is currently under construction and is scheduled for delivery in 2003.
- **The Hudson** – This site is located at Hudson Street and Wilson Boulevard, in close proximity to the Clarendon Metrorail station and consists of 309 residential units (approximately 170 units per acre) in a twelve story building. The project will also include 2,287 square feet of retail space. The site consists of approximately 1.82 acres and is zoned CR.
- **Randolph Towers** – Completed in 1986, Randolph Towers is a 510-unit (approximately 221 units per acre), twenty-one story apartment building that is 204 feet in height. It is located at 901 North Randolph Street on a site of approximately 2.3 acres and is in the Ballston Metrorail station area. The property is zoned C-O-A. The General Land Use Plan designates this site as Coordinated Mixed Use Development.
- **The Gallery at Rosslyn** – In May of 2000, the County Board approved the development of a nineteen story, 314 unit rental apartment building approximately one and a half blocks away from the Rosslyn Metrorail station. The site, at the corner of Key Boulevard and Oak Street, also includes 4,200 square feet of commercial space. Because the site was designated in the Rosslyn Station Area Plan as a Special Affordable Housing Preservation District, the applicant was required to replace the affordable units that had been included in the previous garden apartment complex. The new apartments will therefore include thirty-eight affordable housing units. The applicant's "community benefits" will be provided in the form of a \$500,000 contribution to the County's Housing Reserve Fund. The site consists of approximately 1.5 acres and is zoned RA-H-3.2. The apartment building will be seventeen stories, or 180 feet, in height and will have a density of approximately 209 units per acre.
- **Courthouse Plaza** – Courthouse Plaza is a mixed-use development consisting of two office buildings, two residential buildings, a 324 room hotel and a movie theater on a large site across the street from the Courthouse

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Metrorail station. There is a total of 584,315 square feet of office and 38,842 square feet of retail (theater). There are 396 residential units in two eighteen story buildings at a density of approximately 191 units per acre for the residential portion. The apartment buildings are located at 2250 North Courthouse Boulevard on sites that are approximately 1.3 acres and 0.77 acres. The entire site is zoned C-O and the General Land Use Plan designates it as High Residential/High Office-Apartment-Hotel/Government and Community.

Montgomery County, consistent with the State of Maryland's "Smart Growth" legislation and program, has endorsed a policy of concentrating higher density projects along the Red Line Metrorail corridor, especially inside the Beltway. Montgomery has provided for its most intense development at Friendship Heights and Bethesda. For each of these areas, the County has defined a Central Business District (CBD) in the general proximity of the Metrorail stations and approximately every twenty years has undertaken a detailed Sector Plan study to guide development.

The Friendship Heights Sector Plan, completed in 1998, provided for increased density for three projects – Chevy Chase Center (directly across Western Avenue from the subject property), the Hecht's project (which is across Wisconsin Avenue from the subject property) and the GEICO site (which is to the west of the Hecht's project). In each of these three cases, the approved Sector Plan called for increased density and the ability to gain further additional density under the County's Optional Method of Development in exchange for public use space and amenities. It is important to note that the County's Optional Method for its CBDs encourages residential land use over commercial by allowing a higher density for a project which is all, or partially, residential as opposed to all non-residential. The following projects demonstrate the height and density of other projects in the direct vicinity of 5401 Western Avenue:

- **Chevy Chase Center** – The CBD-1 portion of the project will include 300,000 square feet of commercial space in an eight-story, ninety foot tall structure. The density is a 2.0 FAR which reflects a doubling of the by-right development in exchange for public use space and amenities such as parks, streetscape improvements, landscaping and public art.
- **Hecht's Project** - This CBD-2 zoned site has been approved for 1,050,000 square feet of commercial space (of which 150,000 square feet may be residential) in several buildings on the site which have a maximum height of 143 feet. The approved density for the site is 2.7 FAR which reflects an

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increase from the by-right development of a 2.0 FAR in exchange for public use space and amenities such as a community center, streetscape improvements, landscaping and public art.

- **GEICO Site** - This site is partially zoned for Transit Station Mixed-Use (TS-M) development and approved for 810,000 square feet of commercial space in three buildings (ranging from five to nine stories). The remainder of the site is zoned R-60/TDR and approved for 500 multi-family and townhouse units.

As these sites are essentially commercial projects they do not reflect the County's policy towards specifically encouraging high density housing at Metrorail locations but do demonstrate the support of high density projects as well as the ability to construct high-rise structures in close proximity to Metro stations.

A more directly relevant example of Montgomery County's inducement to develop high-rise residential projects is the 1994 Sector Plan for Bethesda. During this Sector Plan process, the County approved a significant increase in zoning of the Metro Core Corridor (the approximate ten block long area along Wisconsin Avenue from Woodmont Road to Cheltenham) as well as significant new density in the Woodmont Triangle District (bounded by Old Georgetown Road to the south and Woodmont Road to the east). In these areas, the County approved a mix of zones with the predominant zones being CBD-1, CBD-2 and CBD-R2. In each of these zones the County permits significant additional density and height under its Optional Method of Development as summarized below:

Zone Characteristics	<u>CBD 3</u>	<u>CBD - 2</u>	<u>CBD - 1</u>	<u>CBD - R2</u>
Land Use	Office/Retail	Office/Retail	Retail/Office	Residential/Retail
FAR				
Standard	3.0	2.0	1.0	1.0
Standard with Residential	4.0	3.0	2.0	1.0
Optional	6.0	4.0	2.0	5.0
Optional with Residential	8.0	5.0	3.0	
Dwelling Units Per Acre				
Standard	120	80	43	80
Optional	200	200	125	200
Maximum Height				
Standard	72 feet	60 feet	60 feet	60 feet
Optional	143 - 200 feet	143 - 200 feet	90 feet	143 - 200 feet

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We have attached the sections of the Sector Plan for the Metro Core Corridor and the Woodmont Triangle Area District which describes in great detail the general thought process supporting the plan as well as specific areas for individual sites.

Of the five most recently approved residential projects in Bethesda, each project pursued the Optional Method of Development and essentially achieved the maximum density and height proposed in the Sector Plan:

- **The Bethesda Triangle project** – This project, located in the Woodmont Triangle District, is zoned CBD-R2 and has been approved with a 5.0 FAR with a maximum height of 135 feet. Importantly, building height in excess of the 110 foot height limit set forth in the Sector Plan was allowed in recognition of the benefits of having more residential in this urban area. The 371,000 square foot project with 314 apartment units and 33,000 square feet of first floor retail and office is currently under construction.
- **The Bethesda Theatre Café** - This project, located on Wisconsin Avenue two blocks north of the Metro Station, is zoned CBD-2. Even though envisioned at the time of the Sector Plan to be an office building with a 4.0 FAR, it has been approved with a 5.0 FAR with a maximum height of ninety-four feet on Wisconsin Avenue stepping down to sixty-five feet at the rear of site adjacent to a single family neighborhood. The more than 300,000 square foot project with 257 apartment units and 21,000 square feet of first floor retail is currently under construction.
- **The Air Rights Building** - This multi-building office complex, located on Wisconsin Avenue two blocks south of the Metro Station, is zoned CBD-2 with unused density. At the time of the Sector Plan, it was not expected that the unused density would be pursued by the owner. Approval was granted for an addition to the project which would include 165 apartment units with a maximum height of ninety feet stepping down to sixty-five feet at the rear of the site adjacent to a single family neighborhood.
- **Crescent Place** – The recently completed project is five blocks from the Metro Station and is zoned CBD-R2 but the Sector Plan called for a limitation of a 3.0 FAR and seventy-five feet in height. The project was approved at these maximum amounts and includes 149 apartments with no other uses.
- **The former O'Donnell's Restaurant** – This site, located seven blocks from the Metro Station on Wisconsin Avenue on both sides of Rosedale Avenue is

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zoned CBD-1. Development was approved with the maximum standard method FAR of 2.0 and sixty feet in height on the northern portion of the site and the maximum FAR of 3.0 and seventy-eight feet in height on the southern portion of the site. The 189,000 square foot project with 164 apartment units and 18,500 square feet of first floor retail is currently under construction.

As highlighted by these five projects, Bethesda is going to realize a key goal of the Sector Plan to create "a place to live and to work". Further, the incentives provided by the County for higher density projects to incorporate significant residential components has been especially successful as illustrated by the approval of the Bethesda Theatre Café as a predominantly residential project (in lieu of the expected commercial building), the addition of a residential tower to the Air Rights office complex and the additional height allowed for Bethesda Triangle.

Conclusion

The totality of planning and zoning policies applicable to sites near Metrorail stations which are in areas where local governments have determined to encourage housing suggests that increases in height and density are appropriate at such locations. Other jurisdictions have in fact allowed greater height and FAR than proposed in the application for 5401 Western Avenue, but all the policies seem to point to the proposition that multi-family high rise residential is the right use and density for properties such as the subject site.

Attachments

WAS1 #1073531 v1

MEMORANDUM

September 28, 2001

RE: Limitations on Requirements for Public Benefits and Amenities in Planned Unit Developments

A. Introduction and Summary

The purpose of this memorandum is to review the law regarding the public amenities and benefits which lawfully can be required to be provided by the applicant as part of the process for approval of a Planned Unit Development (“PUD”) in the District of Columbia.

This memorandum is prompted by current discussions involving proposed PUDs now pending before the District of Columbia Zoning Commission (“Commission” or “Z.C.”). Neighbors and opponents of these projects have suggested that the scope of the amenities and public benefits required for approval of a PUD properly can include a broad range of concessions and even cash contributions by the developer or landowner, including support of homeless persons’ feeding programs, contributions for physical improvements not proximate to the location of the PUD, and donation to the community of funds for general use. The Office of

Planning also has indicated that a broad scope of amenities and public benefits may be required as a condition for approval of a PUD even though such amenities and benefits do not have a particular nexus with the PUD application.

Based on the language of the PUD regulations, the legislative history of those regulations, the general purposes of a PUD, and U.S. Supreme Court precedents regarding land use decisions, it is our conclusion that the public benefits and amenities required for approval must be both (1) linked to a clear public policy purpose reasonably related to the approval sought, and (2) proportionate to the scope of the zoning relief in excess of normal appropriate zoning¹ sought by the applicant for the PUD. Public benefits and amenities that do not meet this test cannot lawfully be imposed for approval of a PUD. As a result, the Zoning Commission and the Office of Planning may not require a PUD applicant to provide public benefits and amenities which are not linked by such policy and proportionality.

This memorandum first describes the current PUD regulations and the constitutional limitations on the government's ability to require exactions for approval of land use applications. The memorandum then discusses the

¹ Existing zoning constraints may not be appropriate in view of changes in circumstances, mistakes in original zoning, provisions of the Comprehensive Plan or pursuant to other criteria of the Zoning Enabling Act.

requirement of proportionality between the proposed benefits and amenities and the extent of the zoning relief requested.

B. PUD Regulations – Requirement for Policy Nexus

The Planned Unit Development process allows flexibility in zoning restrictions within established boundaries of the zoning provisions. See generally 5 Ziegler, Rathkopf's Law of Zoning and Planning, (“Rathkopf”), §63.01, at 63-2. As one court has described it, the PUD provisions “allow more flexibility in development than is available under the general zoning ordinance while continuing to allow the city to protect the interests it normally protects through general zoning provisions.” Levitt Homes, Inc. v. Old Farm Homeowners' Ass'n, 111 Ill.App. 3d 300, 444 N.E.2d 194, 202 (1982).

In the District of Columbia, the PUD process has served two distinct but related purposes. On the one hand, the PUD process permits the development of a large area as a single unit by relaxing height, density, and use restrictions which would otherwise prevent consolidated development. As the D.C. Court of Appeals has summarized it:

A PUD is a development in which the density and height restrictions which would otherwise be imposed by the zoning regulations are relaxed for the purposes, among others, of offering a variety of building types with more attractive and efficient overall planning. *See generally Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, 426 A.2d 327, 331-32 (D.C.1981). The

PUD scheme permits the development of a large area of a single unit. *Id.* at 332. In exchange for the flexibility which the concept provides, the developer must create a “synchronized amalgam of living, institutional, and commercial facilities with diversity in buildings and structures that is in the spirit of the Zoning Regulations.” *Id.*, citing 5 P. Rohan, *Zoning and Land Use Controls* §32.01[3] (1978).

Rafferty v. District of Columbia Zoning Comm’n, 583 A.2d 169, 171 (D.C. 1990).

The PUD also serves as the District’s only form of conditional zoning. See generally 3 Rathkopf, Chapter 29A. Through PUDs, sometimes previously referenced as “Article 75 developments,” applicants and the District have agreed on development programs and restrictions for specific properties, frequently agreeing to reduced density on a site.

The regulations concerning PUDs were last amended in 1998 in Z.C. Case No. 95-2. As written, the regulations specify the scope of the Zoning Commission’s duties regarding public benefits and project amenities:

In deciding a planned unit development application, the Zoning Commission shall judge, balance, and reconcile [1] the relative value of the project amenities and public benefits offered, [2] the degree of development incentives requested, and [3] any potential adverse effects according to the specific circumstances of the case.

11 DCMR § 2403.8 (emphasis added).

“Public benefits” and “project amenities” are defined terms under the Zoning Regulations

Public benefits are superior *features of a proposed planned unit development* that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter of right provisions of this title.

* * *

A project amenity is one type of public benefit, specifically a functional or aesthetic *feature of the proposed development*, that adds to the attractiveness, convenience or comfort of the project for occupants and immediate neighbors

11 DCMR §§ 2403.6 and 2403.7 (emphasis added).

As the italicized language demonstrates, there is a definitional linkage between the proposed benefit or amenity and the PUD project itself. Benefits and amenities must be features of the proposed project, not just generalized contributions for the “public good” unrelated to the zoning relief sought.

The most recent amendments to the PUD regulations also discussed the necessary policy linkage in the context of off-site amenities. The provision of such amenities had been approved by the Zoning Commission and by the D.C. Court of Appeals. In Blagden Alley Ass’n v D.C. Zoning Commission, 590 A.2d 139 (D.C.1991), the court upheld the Commission’s authority to allow an off-site housing amenity as part of the PUD application. However, the court warned that the off-

site amenity must nevertheless be consistent with the overall goals of zoning and must be related to the relief requested:

[W]e do not minimize the Association's concern about the potential for arbitrary action by a zoning authority. However, the Association's contentions here do not focus on the absence of adequate standards so much as on the fact that off-site amenities are unrelated to the essential purposes of P.U.D.'s as they developed in this country. Of course, when the P.U.D. concept is applied to an urban setting, it is entirely possible that the rationale underlying the relaxation of zoning requirements could incorporate amenities directed at a broader community. Still, we, like the Association, are wary of the effect of a policy that relaxes zoning restrictions while according, without some articulated standards, benefits elsewhere.

* * *

In view of the regulatory caveat that "the PUD process shall not be used to circumvent the intent and purposes if this title," 11 DCMR §2400.5, and the regulation's requirement that the Commission focus on whether an application provides "occupants" of the P.U.D. in a contiguous area with superior amenities, the Commission must explain how its decision to approve an application containing only off-site amenities is consistent with the regulations. It is true that the P.U.D. process must take into account an application's "[c]ompatibility with city-wide and neighborhood goals, plans, and programs," 11 DCMR §2440.5, but this case poses the danger that in approving the application the Commission has allowed these larger goals to determine the P.U.D. process, at the expense of the site-focused requirements of the regulations.

[G]iven the potential arbitrariness of off-site linkage, it would appear that the Commission would be well advised

to promulgate regulations or procedures for approval of this type of off-site linkage.

590 A.2d at 145-46 (citations omitted).

The Commission thereafter adopted regulations which made explicit the need for a policy linkage between the off-site benefit and the proposed project. Section 2403.13 now reads:

Public benefits other than affordable housing, such as public facilities or public open space, may be located off-site; Provided that:

(a) There is a clear public policy relationship between the planned unit development proposal and the off-site benefit; and

(b) The off-site benefit(s) shall be located within one-quarter mile of the PUD site or within the boundaries of the Advisory Neighborhood Commission that includes the PUD site.

This new provision again limited the scope of permissible “public benefits” by requiring that such benefits proposed to be located off-site still had to be within the relevant Advisory Neighborhood Commission (“ANC”) boundaries (or within one-quarter mile of the site) and that there had to be a “clear public policy relationship” between the PUD proposal and the benefit. An off-site public benefit, in other words, cannot be a free-floating “extra” for the PUD applicant to furnish as the price for the PUD. Rather, under the express terms of the regulation, such public benefits must be linked to the purposes and scope of the proposed project.

Such a linkage is also constitutionally required. In a series of cases, the U.S. Supreme Court and other federal and state courts have made clear that governments cannot condition their approval of land use permits on requirements that the landowners contribute to the public good in ways unrelated to the permits. These decisions reflect the increasing risk to governments that withhold approvals in order to exact payments or fees. See generally Comment, "Exactions, Severability and Takings: When Courts Should Sever Unconstitutional Conditions from Development Permits," 27 B.C.Env'tl.Aff.L.Rev. 279 (2000).

In Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987), the Supreme Court held that conditioning the issuance of a building permit on whether the landowners dedicated a portion of the property to a public easement was an unconstitutional taking in the absence of a nexus between the condition and a legitimate state interest. Moreover, the government cannot require a person to give up their right to receive just compensation when property is taken for public use in exchange for a discretionary benefit conferred by the government where that benefit has little or no relationship to the property.

The Coastal Commission in Nollan argued that a lateral public easement along the beachfront to connect two public beaches separated by the Nollans' property was related to the permit requested by the Nollans to demolish an existing bungalow and replace it with a house. The Commission said that the state had a

legitimate interest in diminishing the blockage of the view of the ocean caused by the erection of the new house. The Supreme Court disposed of this argument, as the Court described it in the later Dolan opinion:

How enhancing the public ability's to "traverse to and along the shorefront" served the same governmental purpose of "visual access to the ocean" from the roadway was beyond out ability to countenance. The absence of a nexus left the Coastal Commission in the position of simply trying to obtain an easement through gimmickry, which converted a valid regulation of land use into "an out-and-out plan of extortion."

Dolan v. City of Tigard, 512 U.S. 374, 387 (1994) (citing Nollan, 483 U.S. at 837) (emphasis added).

In Dolan, the city required a landowner to dedicate a portion of her property for flood control and traffic improvements in order to secure a building permit. The Supreme Court agreed that these were legitimate state interests and that the required dedication was related to these interests. However, the Court held that the government must demonstrate a "rough proportionality" between the nature and extent of the required dedication and the impact of the proposed development. 512 U.S. at 391. The Court found that the recreational easement and bike path required by the city did not bear the reasonable relationship constitutionally required.

The Court has referred to the test as requiring a government to show an “essential nexus”² between the permit for which approval is sought and a legitimate state interest:

In short, unless the permit condition serves the same governmental purpose as the development ban, the building restriction is not a valid regulation of land use but an “out-and-out plan of extortion.”

Nollan, 483 U.S. at 837.³

Other courts, applying Nollan and Dolan have struck down the imposition by the government of conditions unrelated to the purposes or scope of the applicant’s requested relief. In Amoco Oil Co. v. Village of Schaumburg, 1992 WL 22591 (N.D.Ill.1992), the city conditioned approval of a special use permit to allow expansion of a service station upon the owner’s agreement to dedicate land. The city argued that this condition was permissible since the state needed land to expand a highway to alleviate traffic conditions and, therefore, the city’s taxpayers would save money. The court rejected this argument:

² This “essential nexus” has elsewhere been described as “a reasonable relationship between the project and the identified public problem.” Isla Verde International Holdings, Inc. v. City of Camas, 990 P.2d 429, 436 (Wash. 1999).

³ In Nollan, Justice Scalia further explained that if the government allows parties to “trade” money for relief from restrictions, the result will be a dilution of the important purposes of the restrictions. 483 U.S. at 837 & n.5.

[S]pecial use permits are not favors to be dispensed in accord with gifts to the government. Both federal and state courts have held that it is unfair to burden one citizen with the cost of a community benefit just because he is unlucky enough to be the next in line for a zoning permit. Where states refuse to protect landowners from uncompensated takings, even those masked by legislative ordinances, the federal courts will.

Id. at *6. See also Goss v. City of Little Rock, 90 F.3d 306 (8th Cir. 1996) (landowner stated claim against city which had conditioned a rezoning on the dedication of land for future expansion of adjacent highway).

In McClure v. City of Springfield, 28 P.3d 1222 (Or. 2001), the Court held that the city had not supported its demand for several dedications of land as a condition for partition and subdivision of lots. The city had asked for a dedication of a 20-foot right of way along “M Street” for future expansion of that street, dedication of a strip for construction of a sidewalk and lighting along “8th Street” and dedication of a triangular area at the intersection of M Street and 8th Streets to ensure adequate sight visibility and turning radius. The Oregon court walked through the analysis advanced by the city in support of these exactions and found the record wanting:

The city explained the need for the M Street dedication, utilizing a detailed calculation to demonstrate that the exaction represented a proportional response to the increase in traffic – 19 vehicle trips per day – that the proposed development was expected to generate. The city did not, however, explain how the 8th Street sidewalk and

clipped corner dedication requirements were relevant or proportional to the expected impacts. . . . We have no difficulty accepting that sidewalks and clipped corners can advance a community's interest in safe streets, but in the absence of findings explaining how the proposed exactions further that aim – and do so proportionally to the effects of the proposed partitioning – the justification required by *Dolan* is missing.

28 P.3d at 1227.

In particularly strong language, one New Jersey court invalidated variances and site plan approvals it found tainted by the planning board's request for a contribution to the town's affordable housing fund. The planning board had originally suggested that if the developer agreed to make a contribution to the fund, it would be "taken into consideration" when the planning board reviewed the application. The court found this improper and invalidated the approvals:

We conclude that the kind of free-wheeling bidding under review is grossly inimical to the goals of sound land use regulation. The intolerable spectacle of a planning board haggling with an applicant over money too strongly suggests that variances are up for sale. This cannot be countenanced.

Nunziato v. Planning Board, 541 A.2d 1105 (N.J.1988).

These and other cases demonstrate that the government cannot use the occasion of a development process to exact monetary and other concessions unrelated to the development. The same analysis would certainly apply where a government body conditions or defers consideration of an approval pending the

landowners' agreement with opponents of the project who insist upon exactions which the government itself could not require. In that circumstance, the government's refusal to approve the application because the neighbors have not agreed to an amenity package has the same effect as if the government itself had insisted upon the amenities.

Planned unit developments are properly tied to the goals and purposes of zoning. The PUD process allows for flexibility but not ad hoc land use decisions which would amount to "spot zoning." By the same token, the fact that a landowner has requested approval of a PUD does not open the floodgates to allow neighbors, opponents or the Office of Planning to seek benefits and amenities not connected to the approval. There must be a public policy connection between the benefits and the requested approvals or else the PUD approval process would degenerate into spot zoning or, even worse, "checkbook zoning," where proponents or opponents undermine the public interest embedded in the zoning regulations in favor of payments and other "benefits" unrelated to the PUD.

C. Weighing of Benefits – Requirement for Proportionality

Once there has been a determination of the "essential nexus" between the proposed benefit or amenity and the purpose of the requested relief, the government must show the "rough proportionality" between the benefit and the relief.

In the District of Columbia, the PUD regulations have consistently adopted the position that the “baseline” for the site is the zoning as approved with the PUD, not the zoning prior to the PUD. Therefore, for an applicant desiring further variation from the strictures of the “new” zoning category, the proposed public benefits are weighed against the new zoning, not the original zoning.

For example, in February 1979, the Zoning Commission revised the PUD regulations to itemize, for the first time, the considerations which the applicant had to demonstrate in support of the public benefit of the project. As reflected in Z.C. Order No. 251, these changes were motivated in part by the concern that the existing regulations lacked “definitive standards”:

One complaint often heard from both developers and other persons appearing in opposition to applications is the lack of clear, definitive standards upon which to judge applications. This left people without a clear guide as to what the Zoning Commission would measure a PUD against.

Z.C. Order No. 251 at 14. In response, the Commission sought to establish reasonable standards for review against which particular PUDs could be judged: “The process is designed primarily to achieve a higher quality of development than is possible under the matter-of-right zoning, while at the same time assuring adequate protection to existing or future conditions in the area which need to be enhanced.” Id. at 22.

The 1979 revisions required that the applicant provide a “statement of the purpose and objectives of the project,” including detailed statements about

The benefits which would accrue which would not be available under existing zoning controls.

The manner in which the proposed development standards are designed to protect the public health, safety, welfare and convenience.

The impact that the proposed project will have on surrounding uses, buildings and areas.

D.C. Zoning Regulations § 7501.563 (1979) (repealed).

The height and density guidelines of the 1979 regulations showed the linkage between the scope of the relief requested and the scope of the benefits. The 1979 regulations established guidelines for development. Section 7501.4 (1979). The regulations then required the applicant to demonstrate “public benefits” if, but only if, the developer sought to exceed the specified guidelines. For example, in setting forth the height guidelines, the Zoning Commission stated:

To exceed the guidelines indicated, the applicant shall have the burden of demonstrating and justifying the public benefits and other meritorious aspects of the proposal which will result if the additional height is approved.

D.C. Zoning Regulations § 7501.41; see also § 7501.43 (gross floor area) (1979).

In discussing the reason for this change, the Zoning Commission linked the potential for increase over the guideline heights and densities with the necessity for such increase in light of the public benefits which would accrue:

For height and FAR, the Commission set out tables of the height and floor area which were to be normal guidelines. In many cases, these guidelines are themselves higher than the maximum permitted as a matter-of-right. In some cases, the guidelines enable property owners to achieve the height and/or floor area ratio which applied to the property prior to the changes adopted by the Commission as part of the revision to commercial, special purpose and mixed use districts. . . . To exceed the guidelines in commercial, SP or CR Districts, the Regulations require that “the applicant shall have the burden of demonstrating and justifying the public benefits and other meritorious aspects of the proposal which will result” if the additional height or floor area is approved. It is the intention of the Zoning Commission to strictly apply the guidelines, and to exceed them only in exceptional circumstances where an applicant can demonstrate that the level requested is entirely appropriate and necessary for the project and will have a positive effect.

Z.C. Order No. 251, at 27-28.

The 1979 regulations, therefore, made more explicit the linkage between the amount of zoning relief requested by the applicant and the public benefits required to be shown. The demonstration of additional public benefits was triggered when

the applicant sought relief “over and above” the guidelines set forth in the regulation.⁴

In the current regulations, the Commission has made clear that its focus is on the “features . . . that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter of right provisions.” 11 DCMR § 2403.6 (1995, as amended). The Zoning Commission expressly invites a comparison between what the landowner could do with the site under appropriate zoning and what the landowner proposes to do with the PUD. With a PUD application, therefore, the Commission is looking for those features of the PUD which trigger a significantly greater *extent* of benefits, not a significantly different *type* of benefit or amenity. The focus remains always on the features of the development and balancing the impacts and benefits.

The matter of right restrictions, moreover, should be those attendant on the site’s appropriate zoning, even if that is not reflected in the current zoning. For

⁴ A similar formula is now found in the current regulation implementing the housing requirement. 11 DCMR § 2404.1 states that if a PUD applicant proposes “an increase in gross floor area devoted to office space over and above the amount of office space permitted as a matter of right under the zoning included as a part of the PUD,” the applicant has to comply with the housing linkage requirements. See also letter attached as Attachment A and dated March 8, 1996, from David A. Clarke, Chairman of the Council of the District of Columbia.

example, assume that a medium-high density site is surrounded by properties which are developed or entitled to higher density zoning (9.0 – 10.0 FAR) development and that the PUD applicant seeks approval for the site which, once changed, would allow 10.0 FAR development, or assume that heights permitted on adjacent or nearby property are in the 130-foot range. The site was “under zoned” to begin with, a situation which might well have been corrected by a conventional zoning map amendment using the procedure which does not require an assessment of “public benefits.” See D.C. Official Code §6-641.02 (2001) (formerly section 5-414); Citizens Ass’n of Georgetown, Inc. v. D.C. Zoning Comm’n, 402 A.2d 36, 39-40 (D.C. 1979) (rezoned property “not out of character with the surroundings”; Commission’s action was not “spot zoning”). It would therefore be improper to order an applicant to provide “public benefits” or amenities through the PUD in order to reach the height and density which the site could enjoy as a matter of right if the site were zoned in character with its surroundings. However, the applicant should have to demonstrate public benefits to achieve height and density over and above such matter of right limits, for example, if the applicant seeks the 5% “bonus” available under 11 DCMR § 2405.3, or does not comply with lot occupancy or rear yard requirements.

The Zoning Commission requires that the applicant establish the extent to which the proposed development “would comply with the standards and

requirements that would apply to a matter of right development,” “the specific relief that the applicant requests from the matter of right standards and requirements,” and, if a map amendment is requested, “the extent of compliance with, and the requested relief from, the matter of right standards and requirements of development under conventional zoning.” 11 DCMR § 2403.11. Again the regulations emphasize that the relevant comparison is not the proposed PUD versus no development on site; rather the relevant comparison is the proposed development and the matter of right appropriate development.

The question of whether certain benefits and amenities are sufficient to support approval of a land use decision has been addressed several times in judicial decisions in the District of Columbia. In Foggy Bottom Ass’n v. District of Columbia Zoning Comm’n, 639 A.2d 578 (D.C. 1994), the D.C. Court of Appeals addressed extensively the question of the quality and quantity of amenities for a PUD program in the context of the further development of the International Monetary Fund (“IMF”) site at 19th and H Streets, N.W. The court upheld the Zoning Commission’s determination that the amenities proposed (superior landscaping and access, larger visitors’ center, building setbacks, architectural design) were sufficient to support the requested increased density and that the amenities for Phase III were sufficient to replace the amenities that had been approved for Phase II, principally creation of a mini-park.

The court also held that the analysis employed by the Zoning Commission was proper, notwithstanding the complaints of the Foggy Bottom Association that the wrong tests were being applied:

The Commission declined to analyze the dollar figures attributed by opponents to the increase in FAR as compared to the value of the proposed Phase III amenities and public benefits. It also declined to adopt the view of the Office of Planning that “a true net gain” in amenities and public benefits should be required in return for the increased density. In view of the nature of petitioner’s objections to elimination of the mini-park and the increased density, the Commission’s order undoubtedly would have benefitted from a comparison of the amenities and public benefits in Phase II and Phase III. . . . Nevertheless, we conclude that it is implicit in the Commission’s findings that Phase III’s proposed building design and materials, landscaping, and expanded Visitors’ center, when combined with the superior working space and the importance of the IMF’s location at the present site in the District of Columbia, provided adequate amenities and public benefits.

639 A.2d at 584 (emphasis added). See also Id. at 587-88 (Commission’s findings regarding amenities were supported by record evidence; Commission not required to make finding that IMF was providing net increase in amenities and public benefits in Phase III over Phase II).

The court also upheld the Zoning Commission’s determination that approval of the Phase III PUD was not related to the impact triggered by the relocation of Western Presbyterian Church from the PUD site to another location in the

neighborhood. The court stated that IMF was not suggesting that the church relocation was part of the public benefits in support of its PUD application and that even the Office of Planning found the connection “tenuous” between the PUD modification approval and the impact of the church’s homeless feeding program at its new location. 639 A.2d at 590. The decision therefore supports the argument that PUD approvals cannot be freighted with the diverse impacts off-site which might be related to construction of the PUD. Id. (“it is difficult to understand how the IMF or the Commission could control the activities at a different location of the former owner of Lot 826”).

Proportionality remains an issue even if the “essential nexus” is established. In Ehrlich v. City of Culver City, 911 P.2d 429 (Cal. 1996), the California Supreme Court held that the government could impose a fee as a condition for the applicant’s proposed conversion of property from recreational use to residential use. The “essential nexus” was found in the need to alleviate the demonstrated deficiency in municipal recreational resources and the city’s commitment to purchase additional recreational facilities with the proceeds of the fee. However, the Ehrlich court found that the proposed fee was not supported in the record since it was based on the argument that the city “lost” the value of the applicant’s facilities: “The city may not constitutionally measure the magnitude of its loss, or of the recreational exaction, by the value of facilities it had no right to appropriate without payment. . .

provided on a voluntary basis. Over a period of time, these efforts on behalf of applicants have come to be viewed as requirements of the Zoning Commission when, in fact and in law, they are entirely separate from the regulatory standards of the PUD process. This desire of an applicant to obtain broad support for a project through discussions and negotiations is a major source of confusion that exists today among organized citizen groups and ANC's, as well as the Office of Planning and perhaps even the Zoning Commission. But to treat contributions to the neighborhood or community not required by the PUD regulations as PUD requirements would be contrary to the law described above. The Zoning Commission may not grant zoning on the basis of arrangements between the applicant and third parties anymore than it can sell higher density zoning; rather, it is limited by the provisions of the regulations and specifically the purposes of the zoning regulations as set forth in D.C. Official Code § 6-641.02.⁶ It is also clear that the Zoning Commission may not make its zoning decisions on the basis of plebescite.

⁶ Nor does the requirement of "great weight" for an ANC position allow such consideration. The "great weight" requirement is one of process and not evidence. In other words, the Zoning Commission must address issues raised by the ANC, but merely because an ANC has a position does not allow the Zoning Commission to give that position special weight. See Kopff v. District of Columbia ABC Board, 381 A.2d 1372 (D.C. 1977), aff'd 413 A.2d 152 (D.C. Cir. 1980).

Respectfully, it is suggested that in determining whether to approve a PUD with or without a change in zoning, the following steps should be followed by the Zoning Commission:

1. Determine, based upon a preponderance of the evidence of record, whether the PUD as proposed meets the general standards for zoning set forth in the Zoning Enabling Act. See § 6-641.01 D.C. Code.
2. As part of the Zoning Commission's determination, assure that any deviations from, or increases over, appropriate base zoning are balanced by public benefits and amenities related and proportionate to the deviations and increases requested.
3. Where items have been provided to the community which are outside the policy and proportionality limitations described above but are part of a negotiated agreement between an applicant and the community, the Zoning Commission may recognize such contributions but may not deem them to be, nor make them, conditions to the approval of the PUD. Rather, such agreements are between the applicant and the receiving persons or parties.

Holland & Knight LLP

By: Wayne S. Quin, Esq.
Paul J. Kiernan, Esq.
Steven E. Sher, Director of
Zoning and Land Use Services

Attachment



COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

March 8, 1996

Jerrily R. Kress, Chairperson
Zoning Commission for the District of Columbia
441 4th Street, N.W.
Washington, D.C. 20001

96 MAR 14 12:00
OFFICE OF ZONING
DISTRICT OF COLUMBIA

RE: Case No. 95-2 (Housing Linkage)

Dear Ms. Kress:

I am writing to comment on one aspect of the proposed text amendments on housing linkage which is pending before the Zoning Commission in Case No. 95-2 and which, as currently proposed, is contrary to the Council's intent in enacting the housing linkage provisions as part of the Comprehensive Plan.

It is my understanding that the Zoning Commission has proposed that the housing linkage conditions would be required to be satisfied when an applicant obtains an increase in density as a result of a map amendment that is also part of a planned unit development ("PUD") application. However, the Council enactment specifically defined "zoning density increase" -- the receipt of which would trigger the housing linkage requirement -- to say that the term "does not include increased floor area ratio that is obtained ... pursuant to an amendment of the Zoning Map" (see section 308b (10)(O) of the Comprehensive Plan; emphasis added). An amendment of the zoning map is what it is whether or not it is combined with a PUD that may or may not provide additional bonus density on top of the increased density from the map amendment.

The rationale for excluding increased density obtained from zoning map amendments was that such rezonings by definition would be not inconsistent with the Comprehensive Plan and the increased densities from such rezonings would, by definition, become a "matter of right." It was the "little extra" in office space on top of matter-of-right density for which the Council intended an applicant to provide a "little extra" to the public in terms of an affordable housing amenity. (See page 18 of the Report of the Committee of the Whole on the Comprehensive Plan Amendments Act of 1994, dated May 17, 1994, on which the Committee stated: "The housing linkage concept is that if an applicant is going to get a little extra in the form of bonus office space in the District, the applicant ought to give a little extra in the form of more housing in the District.")

1 ZONING COMMISSION
CASE No. 95-2
45
EXHIBIT No. _____

Handwritten: 3/14/96

I urge the Commission to revise the language of the proposed text amendments to ensure that housing linkage is required only for that part of increased commercial density obtained by an applicant as a result of the planned unit development regulations, and not for the increased commercial density obtained as a matter of right from a zoning map amendment. In urging this change, I want to reiterate my appreciation for your moving forward with this case to implement the housing linkage provisions of the Comprehensive Plan. Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Clarke", with a long horizontal flourish extending to the right.

David A. Clarke
Chairman

cc: Councilmember Frank Smith
Planning Director Jill Dennis

List of Witnesses

Douglas Firstenberg, Stonebridge Associates, Inc.

Shalom Baranes, Shalom Baranes Associates, P.C.

Mark Gilliland, Shalom Baranes Associates, P.C.

Roger Courtenay, EDAW Landscape Architects

Cullen Elias, O.R. George & Associates

Eric Smart, Bolan Smart Associates, Inc.

Steven E. Sher, Holland & Knight, LLP

**ESTIMATED TIME REQUIRED FOR
PRESENTATION OF APPLICANT'S CASE:**

1.5 Hours

**OUTLINE OF TESTIMONY OF DOUGLAS FIRSTENBERG,
STONEBRIDGE ASSOCIATES, INC.**

- I. Introduction and Experience of Stonebridge Associates, Inc.
- II. General History of Proposed Development of Site
- III. Proposed Development and Use
- IV. Work With Community and District Agencies
- V. Public Benefits and Project Amenities
- VI. Conclusions

WAS1 #1111483 v1

**OUTLINE OF TESTIMONY OF SHALOM BARANES,
SHALOM BARANES ASSOCIATES, AND
MARK GILLIAND, SHALOM BARANES ASSOCIATES**

- I. Introduction
 - A. Description of Shalom Baranes Associates
 - B. History and Experience in Washington, D.C.
- II. Site Location and Description
 - A. Overview of Site, Surrounding Area, and Land Use
 - B. Design Considerations
- III. Project Design
 - A. Overview and Introduction
 - B. Review of Design and Design Changes
 - C. Building Mass and Height
 - D. Access, Parking and Loading
 - E. Open Space and Preservation of Existing Trees
 - F. Final Development Data
- IV. No Deviations from Requirements of Zoning Regulations
- V. Conclusions

OUTLINE OF TESTIMONY OF
EDAW LANDSCAPE ARCHITECTS

- I. Introduction
- II. Experience and Expertise
- III. Site Location and Description
- IV. Project Design
 - A. Design Considerations
 - B. Open Space
 - C. Streetscape
- V. Conclusions

OUTLINE OF TESTIMONY OF CULLEN ELIAS,
O.R. GEORGE AND ASSOCIATES

- I. Introduction
- II. Experience and Expertise
- III. Background and Study Purpose
- IV. Existing Roadway and Traffic Conditions
- V. Background Traffic Situation
- VI. Traffic Impact Analysis
 - A. Development Plan – Weekday Traffic
 - B. Development Plan – Weekend Traffic
 - C. Trip Generation
 - D. Capacity Analysis – Year 2006 Total Traffic Situation
- VII. Parking Analysis
- VIII. Transportation Management Plan
- IX. Traffic Mitigation and Community Improvements
- X. Summary of Findings and Conclusions

**OUTLINE OF TESTIMONY OF ERIC SMART,
BOLAN, SMART ASSOCIATES, INC.**

- I. Introduction
- II. Experience and Expertise
- III. Description of Site and Project
- IV. Economic Benefits
 - A. Direct Annual Tax District Tax Revenue
 - B. Construction Related Benefits
 - C. Additional Project Benefits
 - D. Employment Benefits
 - E. Neighborhood Enhancements
- V. Comparative Analysis
 - A. Washington Clinic
 - B. Matter of Right
- VI. Economic Impact Summary
- VII. Conclusions

**OUTLINE OF TESTIMONY OF
STEVEN E. SHER, LAND PLANNER**

- I. Introduction
- II. Experience and Expertise
- III. Site Location and Description
- IV. Description of Surrounding Area
- V. Zoning
- VI. Proposed Development
- VII. Compliance with PUD Requirements (Chapter 24)
- VIII. Consistency with the Comprehensive Plan
- IX. Conclusions

**LIST OF MAPS, PLANS, OR OTHER DOCUMENTS READILY
AVAILABLE WHICH MAY BE OFFERED INTO EVIDENCE**

1. Exhibits Herein
2. Exhibits Submitted with PUD Submission on March 22, 2002
3. Zoning Regulations and Map of the District of Columbia
4. Generalized Land Use Map of the District of Columbia
5. District of Columbia Comprehensive Plan (“Comprehensive Plan”)
6. Ward 3 Element of the Comprehensive Plan
7. Metrobus and Metrorail Route Maps and related WMATA Materials
8. Orders of the D.C. Zoning Commission and Board of Zoning Adjustment
9. Orders and Reports of District and Federal Agencies
10. Publicly Available Information from District of Columbia
11. Publicly Available Information from Montgomery County, Maryland

LIST OF OWNERS FOR MAP AMENDMENT APPLICATION

<u>Name</u>	<u>Address</u>
5401 Western Avenue Associates, LLP	Two Bethesda Metro Center Suite 220 Bethesda, MD 20814
Abraham and Louise Lisner Home (Lisner-Louise-Dickson Home)	5425 Western Avenue, N.W. Washington, D.C. 20015

WAS1 #1112347 v1

**NAME AND MAILING ADDRESS OF EACH PERSON HAVING
A LEASE WITH THE OWNER FOR ALL OR PART OF ANY BUILDING
LOCATED ON THE PROPERTY INVOLVED IN THE APPLICATION**

Name

Address

Dr. Frederick P. Smith, MD

5401 Western Avenue, N.W.
Washington, D.C. 20015

WAS1 #1112346 v1

Stonebridge Report on Owners of Property within 200 feet of Project Site

SSL	PREMISEADD	OWNERNAME	CAREOFNAME	ADDRESS1	ADDRESS2	ADDRESS3
ANC 3E			ANC 3E	PO Box 9953, Friendship Station	Washington, D.C.	20016
District of Columbia						
1661	0813 5335 WISCONSIN AV NW	COMMONWEALTH CC PAVILION		C/O LOWE ENTERPRISE	1945 OLD GALLOWS RD #210	VIENNA, VA 22182
1661	0842 5358 43RD ST NW	MARGARITA M ROLDOS			5358 43RD ST NW	WASHINGTON, DC 20015
1661	0843 5360 43RD ST NW	PIROOZ A ZIA			5360 43RD ST NW	WASHINGTON, DC 20015
1661	0844 5362 43RD ST NW	ROBIN L REDFIELD			5362 43RD ST NW	WASHINGTON, DC 20015
1661	0845 5364 43RD ST NW	THOMAS A SCHMITZ &	VALERIE HARDING		5364 43RD ST NW	WASHINGTON, DC 20015
1661	0846 5366 43RD ST NW	ELYSSA J SPEIER			5366 43RD ST NW	WASHINGTON, DC 20015
1661	0847 5368 43RD ST NW	MARY LINDQUIST			5368 43RD ST NW	WASHINGTON, DC 20015
1661	0853 43RD ST NW	COURTS CHEVY CHASE OWNERS	ASSOC INC		5324 43RD ST NW	WASHINGTON, DC 20015
1661	0854 43RD ST NW	COURTS CHEVY CHASE OWNERS	ASSOC INC	C/O MIKE MEIER	5324 43RD ST NW	WASHINGTON, DC 20015
1661	0855 5333 WISCONSIN AV NW	STREET RETAIL INC			1626 EAST JEFFERSON ST	ROCKVILLE, MD 20852
1663	0006 4211 MILITARY RD NW	BETSEY A KUHN &	STEVEN T KUHN		4211 MILITARY RD NW	WASHINGTON, DC 20015
1663	0007 5425 WESTERN AV NW	A & L LISNER HOME			5425 WESTERN AV NW	WASHINGTON, DC 20015
1663	0805 5401 WESTERN AV NW	5401 WESTERN AV ASSOC			5401 WESTERN AV NW	WASHINGTON, DC 20015
1664	0105 5343 43RD ST NW	JACKIE L BRAITMAN			5343 43RD ST NW	WASHINGTON, DC 20015
1664	0130 5360 42ND PL NW	MEREDITH & SUSAN HADDOCK			5360 42ND PL NW	WASHINGTON, DC 20015
1664	0131 5358 42ND PL NW	MICHAEL & V L S L'ALLIER			5358 42ND PL NW	WASHINGTON, DC 20015
1664	0132 5354 42ND PL NW	SALLY JOAN GREENBERG &	ABBE SMITH		5354 42ND PL NW	WASHINGTON, DC 20015
1664	0810 4228 MILITARY RD NW	HAZEL F REBOLD			4228 MILITARY RD NW	WASHINGTON, DC 20015
1664	0811 5347 43RD ST NW	MARTIN D ROJAS &	MARIA G BOREGUERO		5347 43RD ST NW	WASHINGTON, DC 20015
1664	0829 4224 MILITARY RD NW	LEO J. ROCCA JR.		C/O WILLIAM C JANSON	4224 MILITARY RD NW	WASHINGTON, DC 20015
1664	0830 4208 MILITARY RD NW	OSCAR GUARDADO &	BIANCA GUARDADO		4208 MILITARY RD NW	WASHINGTON, DC 20015
1664	0831 5339 42ND PL NW	MEE SEE PHUA			5339 42ND PL NW	WASHINGTON, DC 20015
Maryland						
Parcel A	2 Wisconsin Circle	Two Wisconsin Circle Jnt Vent	c/o Chevy Chase Land Co		2 Wisconsin Circle	Chevy Chase, MD 20815
Parcel B		Chevy Chase Land Company			2 Wisconsin Circle	Chevy Chase, MD 20815
Lots 9, 19, 21-43		Chevy Chase Land Company			2 Wisconsin Circle	Chevy Chase, MD 20815

Holland & Knight LLP
Washington, DC 20006

August 19, 2002

Proposed Elements of Construction Management Plan
5401 Western Avenue, N.W.
August 19, 2002

Stonebridge Associates, Inc. (the "Developer") proposes the following Construction Management Plan to minimize any impacts from construction on the adjacent communities. Elements of this construction plan will include the following:

1. Pre-Construction. Prior to the start of construction, the Developer agrees to undertake certain pre-construction surveys, testing and subsurface exploration programs, including the following:

a. Pre-Construction Survey. Prior to any grading or excavation, the Developer will perform a survey to document the current condition of houses within close proximity to the Subject Site. Prior to the Developer undertaking the survey, the Developer shall submit to the Advisory Committee the names of the three surveyors deemed appropriate for the pre-construction survey. Within five (5) business days of receiving the complete list of candidates, the Advisory Committee shall determine the surveyor who will perform the pre-construction survey as well as a list of homes to be surveyed (the "Surveyed Homes"). The Developer will pay for these surveys, which will be completed within a reasonable time prior to any grading, excavation or other construction activity being performed on the Site. Owners of the Surveyed Homes (the "Owners") are entitled to provide evidence of the existing condition of their homes which shall be included in the survey. The Developer will furnish to each of the Owners a copy of the survey relating to their

home when it is completed and prior to the beginning of any grading, excavation or other construction activity, and will furnish copies of the surveys to the Advisory Committee, unless the Owner objects. In the event that an Owner does not provide reasonable access to its property or does not reasonably cooperate with the surveyor during the survey process, the Owner will not be permitted to use the processes and procedures set forth herein. The Developer or the surveyor will notify the Owners by Federal Express of the opportunity to have a pre-construction survey conducted by the surveyor. The Owners shall be provided a reasonable period of time to respond to such notice, to respond to the surveyor's reasonable request for access to the Owner's property, and to respond to other reasonable requests of the surveyor.

b. Other Surveys and Testing. In addition, prior to the start of construction, the Developer will perform other survey work, exploration and testing programs, as necessary. These may include: (i) geotechnical investigation to determine the structural strength of the existing soils, (ii) utility investigations to determine the location of water, sewer, electricity and gas systems, and (iii) water pressure investigations to determine the water pressures provided by the local utility, and (iv) studies to determine the necessity of blasting. The Developer will provide the Advisory Committee copies of all surveys and reports that are prepared, to be held in confidence by the Advisory Committee.

c. Communication. The Developer shall designate a representative ("Representative") to be the key contact for interaction with the Advisory Committee and members of the community. The Representative will have

an office at the site or in the immediate vicinity and will be accessible during all business hours. In turn, the Advisory Committee will designate a contact person ("Contact Person"), who may change from time to time, and whose identity the Advisory Committee shall report to the Developer, to represent the Advisory Committee. The Contact Person will receive and disseminate information from the Developer. At any time construction activity is occurring on the Site, the Representative or his/her designee shall be available on-site or by telephone to receive complaints or other communications from the Advisory Committee or members of the community. The name and work telephone number of the Representative or his/her appointed designee shall be conspicuously posted at the Site and shall be readily available to members of the community. In addition, a name and telephone number of a person designated by the Developer to contact in case of emergency during hours in which no construction activity is occurring shall be readily available to members of the community. The Developer shall provide to the Contact Person, and keep updated, the names of and pertinent information about the Representative, the designee and emergency contact, including their home phone numbers and beeper numbers, as appropriate. The Representative, designee and emergency contact shall: (i) receive notice of violations of the Construction Management Plan; (ii) respond as soon as possible, to the person who has reported the violation; and (iii) act to remedy the violation as soon as possible. The Representative and his/her designee will be able to answer questions and receive comments about the site activities, address any concerns the Advisory

Committee and members of the community might have throughout the construction process, and have authority to remedy promptly violations of the Construction Management Plan and enforce its provisions.

2. Construction. It is anticipated that construction activities will start at the Site on or about _____. The following is a discussion of construction-related issues and shall be binding on the Developer, its subcontractors and any successors and/or assigns of the Developer.

a. Permits. The Developer will secure all permits that are required to complete the project. The Developer will provide the Advisory Committee and the Contact Person with notification of permits that require partial or total closures of streets or sidewalks, except in emergency situations.

b. Site Management.

i. The Developer will erect and maintain construction fencing and barricades along all streets that border the Site in order to screen and secure the site during the construction process. In addition, to the extent it does not interfere with construction, the Developer will erect either solid fencing or chain-link fencing with screening along Military Road, as necessary for dirt control. The Developer will provide the Contact Person with all permits obtained from the District of Columbia Department of Consumer and Regulatory Affairs regarding soil erosion control and shall strictly adhere to the requirements of such permits.

ii. Construction or rental offices will be located in trailers on the Site or on adjacent public spaces with public space permits. Such trailers will be kept in a clean and orderly condition.

iii. A minimum amount of lighting will be provided at the Site at night. These lights will be sufficient to provide necessary security and to comply with federal and municipal safety standards. The lights will be directed at the areas to be lighted within the Site and, when possible, away from the residences on Military Road.

c. Cleanliness. The Developer will remove rubbish and construction debris continuously during the construction period during the normal construction workday and during periods of overtime and weekend construction work. In addition, the Developer will monitor and police the construction site daily or more often as required to ensure cleanliness.

i. Dumpsters will be placed on the Site. In no event will dumpsters be placed at or near the corner of Military Road and 43rd Street, N.W. Hauling and replacing dumpsters is under no circumstances to be done except between the hours of 8:00 a.m. and 7:00 p.m., Monday through Friday, and 8:00 a.m. to 4:00 p.m. on Saturday.

ii. Trucks carrying excavation material and debris from the Site will be covered with tarps. Trucks shall enter/exit the Site on Western Avenue.

iii. The Developer will leave the streets clean at the end of each construction day, including sweeping up any soil spread by vehicles.

iv. The Developer will wash the outside of the windows of the Surveyed Homes at least three times during the construction period. This shall include washing in approximately _____, 2004, _____, 2005 and promptly after completion of construction.

v. The Developer will undertake a program of pest control to ensure additional monitoring of pest activity during the construction period.

vi. Portable latrines, if any, will be placed on the Site as far as possible, considering proper safety, sanitary and construction activity requirements, from Military Road, 42nd Place, and 43rd Street portions of the Site.

d. Work Hours. The normal construction work week will be Monday through Friday from 7:00 a.m. until 7:00 p.m., and Saturday from 8:00 a.m. until 4:00 p.m. All trucks for delivery of all materials, construction or otherwise, will arrive, depart and operate on the Site only during the foregoing hours. During certain phases of the construction, overtime hours after 7:00 p.m., but not later than 11:00 p.m. or before 7:00 a.m., except for emergency situations, will be necessary. Whenever overtime hours will be necessary, the Developer will provide notification to the Contact Person, at least 24 hours prior to implementation of the overtime hours (unless an emergency situation occurs or an unforeseen and urgent construction situation occurs, in which instance the Developer will provide notice to the Contact Person, as soon as possible, that construction work will be performed on the Site during overtime hours and describe the nature of the emergency or unforeseen and urgent situation). Such notification shall include the proposed

overtime hours, a description of the type of work to be done in those hours, and the potential impact of the work on noise, dirt and traffic in the area. In order to perform work during overtime hours, the Developer will be required to obtain an after hours construction permit from the District of Columbia. There will be no Sunday construction work permitted. (In addition, if the District of Columbia has more stringent regulations, the Developer will comply with the applicable work hour rules). In consultation with the Advisory Committee, the frequency of overtime work will be determined based on consideration of the beneficial effects to the neighborhood of completing construction of the project in the shortest amount of time, and the effects on the neighborhood of construction activity on the Site during overtime hours.

e. **Subcontractors.** The general contractor for the project will have full responsibility for all subcontractors employed by them to work on the project. They will ensure that the subcontractors follow the terms of their agreements with the Developer and comply with the policies set forth in the Construction Management Plan.

i. The Developer will not permit or tolerate off-site picnicking by workers employed by either the general contractor or subcontractors (the “Workers”) on residential streets. Those Workers who bring their meals and snacks to the site will be required to eat inside the fenced Site. Those Workers who go off-site to eat will be required to eat the meal at the premises where it is purchased or, within the fenced Site.

ii. The Developer will monitor the site daily for cleanliness and will remove picnicking trash resulting from the Workers on all public roads and adjacent property abutting the Site.

iii. In addition, Workers shall not drink alcoholic beverages either openly or from paper bags in the foregoing residential areas before, during or after work hours.

f. Traffic, Parking and Loading.

i. All construction related vehicular access to the Site shall be via Western Avenue.

ii. The Developer will ensure that queuing of trucks for the project will occur on the Subject Site to the extent possible. Trucks will not park in front of the residences on Military Road. When queuing on the streets is required, it will be for the minimum amount of time possible. Trucks in the queue will turn their engines off, until ready to move. To the extent possible, trucks on the Site will turn their engines off, except when powering equipment actively in use.

iii. Flagmen will be employed by the responsible subcontractors to ensure the safety of cars and pedestrians as trucks enter and leave the Site. Trucks leaving the Site will move from Western Avenue and then on to their destination, and will not use Military Road. The final routing of trucks is subject to the approval of the Department of Public Works.

iv. Parking for Workers and visitors to the sales trailers will either be provided for on the Site, or in off-street parking structures. The Developer will notify Workers on a regular basis of the parking restrictions set forth

herein. During the weekend overtime periods, the Developer will require that Workers will not park in areas for which only weekday restrictions apply. The Developer will monitor compliance by Workers with the parking restrictions and, if Workers' vehicles are in violation of that restriction, the Developer will require Workers to move their vehicles. The Developer will use its best efforts to enforce these restrictions.

3. Post-Construction.

a. Damage to Surveyed Homes. The Developer agrees that, in the event that any of the Surveyed Homes sustains damage due to excavation, construction or any other activities related to this project, repairs will be arranged by the Owners and paid for by the Developer, pursuant to procedures outlined in herein. The Construction Management Plan sets forth post-construction procedures that apply to the Developer and the Owners only, and not homeowners of other neighboring houses.

b. Post-Construction Survey. No later than six months after construction is completed, (evidenced by the issuance of a Certificate of Occupancy for the Site) upon written request of any Owner, the Developer shall order, carry out and pay for a post-construction survey to be completed within four weeks of the request. The post-construction survey will determine if any damage has occurred to the Surveyed Homes. The Developer will seek to use the same surveyor as employed for the pre-construction survey (discussed above). To determine the validity of a damage claim, in addition to a post-construction survey ordered by and paid for by

the Developer, an Owner may order his/her own survey to be performed. The cost of such survey shall be borne by the Owner.

c. Dispute Resolution. Any dispute concerning the extent of construction-related damage or cost of property repair may, at the option of the Owner, be resolved by litigation or arbitration in accordance with the Rules of Procedure of the American Arbitration Association. All costs in connection with the survey, arbitration proceedings and related expenses shall be borne in the following manner: If the Plaintiff substantially prevails, the Developer shall pay all the Plaintiff's cost and expenses including reasonable attorneys fees; if the arbitrator or court determines that the Plaintiff's claims are frivolous, the Plaintiff shall pay its own costs and expenses and the arbitrator or court shall determine the portion of the Developer's attorney fees, if any, the Plaintiff will be required to pay. If the Developer prevails but the arbitrator or court does not determine that the Plaintiff's claim is frivolous, the Developer shall be responsible for their own expenses and the costs of arbitration or litigation, and the Plaintiff will be responsible for its expenses. Damages include, but are not limited to damages to the structure, its contents and loss of use (if caused by damage to the structure).

d. Post-Construction Residential Contact Person. The Developer will notify the Advisory Committee and each Owner of the name, address, and telephone number of the property manager who takes over the operation of the project. When the project is substantially completed, as evidenced by the issuance of a Certificate of Occupancy, the property manager will become the

contact for all post-construction communication, not including damage claims by any Owner against the Developer.

4. Condition of PUD Approval. The Construction Management Plan shall be submitted as part of the PUD and Zoning Map Amendment application to the Zoning Commission and shall be incorporated in and become a condition of any Zoning Commission approval of the applications of the Developer.

5. Complaint Procedure; Establishment of Fines. The following complaint procedure is provided to facilitate resolution of complaints by Owners and other persons. In accordance with Paragraph 6, this claims procedure is permissive and should not preclude other legal actions by Owners or other persons.

a. Complaint Process. Any complaint by an Owner or other person of any violation of the Construction Management Plan is to be made in accordance with the following:

i. Initial complaint of a violation shall be made to the Developer Representative for resolution.

ii. If the problem is not resolved within 14 days from the date of complaint, or a second violation of the same event or of a similar nature occurs within ninety (90) days of the initial complaint, then the complaint shall be presented for resolution to the Liaison Committee, which is comprised of four members: one representing the Developer, one representing Shalom Baranes Associates (the “Architect”), and two representing the Advisory Committee. A resolution of the Liaison Committee requires unanimous consent. A Liaison

Committee Advisor (the “LCA”) shall be chosen by the Developer from a list of at least three (3) candidates provided by the Advisory Committee. The role of the LCA is to advise the Liaison Committee and to provide a final determination on whether or not a violation of the Construction Agreement occurred, pursuant to paragraph 7.b.

b. Liaison Committee; Liaison Committee Advisor

Authority. If the problem is not resolved by the above procedure within 14 days from the date of the Liaison Committee meeting or a third or subsequent violation of a similar nature occurs within ninety (90) days of the initial complaint, the Liaison Committee and the LCA shall meet to discuss whether the alleged violation(s) occurred or the degree of the violation. If resolution still cannot be reached within 14 days of the Liaison Committee and the LCA meeting to discuss the violation, the LCA shall determine whether a violation or violations of the Construction Management Plan have occurred. Any determination that one or more violations have occurred shall further include a determination as to whether the violation(s) are major or minor, as defined in the schedule of fines attached hereto and incorporated herein as Exhibit A. The Developer shall then pay the appropriate fine amount. The term “fine” is meant to be money paid not as a penalty, but as liquidated damages. The fines are not a penalty, it being agreed by the Developer and the Advisory Committee that the exact amount of damages is impractical or impossible to ascertain, and the established amounts are reasonable estimates of the damages that the Advisory Committee and its members will incur

as a result of such violations. The fines shall be paid by check delivered to the Contact Person within thirty (30) days of the Liaison Committee or the LCA's giving notice of the violation(s) and amount of fine(s) to the escrow account designee (as described in Paragraph 5c), and the Developer. Such check shall be made payable to an organization to be determined in the name of the Advisory Committee. Any determination by the Liaison Committee or the LCA shall be binding on all parties. Failure of the Developer to pay such fines within the thirty-day (30-day) time period will cause the amount of fines to double.

c. Escrow Account. The Developer shall establish an escrow account in the amount of \$5,000.00 and shall at all times maintain that balance, replenishing the account immediately when any draw on the account reduces the balance below \$5,000.00. The payment of any fines, pursuant to Paragraph 5b, shall be made from this escrow account. The escrow account shall be held by a mutually agreed upon designee. The fines shall be paid by the escrow account designee to an organization to be determined within thirty (30) days of receiving written notification of the decision of the Liaison Committee and/or LCA.

6. Remedies. The Construction Management Plan does not limit any common law or statutory rights or remedies available to any Owner or person relating to damages sustained to person or property attributable to activities of the Developer. The Construction Management Plan does provide additional rights.

EXHIBIT A
Schedule of Fines

Infractions	Fines
A. Failure to Provide Property Owners with Pre-construction Survey	\$10,000
B. Major Infractions	\$1,000/per violation as Determined by the LCA

These would be actions that adversely impact the area surrounding the Site and include a patter of continued violations of the condition contained in the Construction Management Plan. Such violations would include frequent violations of the permitted construction activity periods, and/or delivery periods, and/or repeated inattention to the concerns of the Liaison Committee.

C. Minor Infractions	\$100 - \$250
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These would be actions that adversely impact the neighborhood but are deemed to be minor by the Liaison Committee and the Liaison Committee Advisor. These actions would include non-recurrent time period and/or delivery period violations and an isolated instance of failure to respond to the Advisory Committee or neighborhood concerns in a timely manner.

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C. 1-22, 2002

Plat for Building Permit of SG-1663 LOTS 805

Scale: 1 Inch = 100 feet · Recorded in Book 189 Page 54

Receipt No. 6951

Furnished to: SHALON BARANES, INC.

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

[Signature]
Surveyor, D.C.

Date: _____

By: DH JKX

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

