

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 05-30**

**Z.C. Case No. 05-30**

**Consolidated Planned Unit Development – 6000 New Hampshire Avenue, N.E. –  
West\*Group Development Company, LLC and The Jarvis Company, LLC  
December 11, 2006**

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on July 20, 2006 and September 7, 2006 to consider an application from West\*Group Development Company, LLC and The Jarvis Company, LLC, the developers, on behalf of 6000 New Hampshire Avenue, LLC, the owner of the subject property (collectively, “Applicants”), for consolidated review and one-step approval of a planned unit development (“PUD”) and a related zoning map amendment from R-1-B to R-5-A. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application, subject to conditions.

**FINDINGS OF FACT**

**The Applications, Parties, and Hearings**

1. On September 12, 2005, the Applicants filed an application with the Commission for consolidated review and approval of a planned unit development (“PUD”) for property consisting of Parcels 126/24 and 126/74; Lots 69, 70, 71, 72, 73, 801, 824, and 826 in Square 3714; and Lot 858 in Square 3719 (the “Subject Property”), as well as a related amendment of the Zoning Map from the R-1-B to the R-5-A District for the site. As shown on the site plan, the Applicants are conveying a portion of Parcel 126/74 to the owner of Lot 38 in Square 3719 in exchange for a portion of Lot 38. The Applicants are also conveying a portion of Parcel 126/74 in exchange for a portion of Lot 23 in Square 3719. The owners of these properties consented to the inclusion of this land in the PUD. The Subject Property consists of approximately 505,062 square feet of land area and is located in the Northeast quadrant of the District. Parcel 126/24 is a small, triangular piece of land that is generally bounded by Chillum Place and Peabody Street. Parcel 126/74 and Lot 858 in Square 3719 are generally bounded by Rittenhouse Street, New Hampshire Avenue, Peabody Street, Chillum Place, and Sligo Mill Road. Lots 69, 70, 71, 72, 73, 801, 824, and 826 in Square 3714 are bounded by Peabody Street, New Hampshire Avenue, a 15-foot public alley, and 1<sup>st</sup> Street. As originally submitted on September 12, 2005, the proposed project included 199 residential units—27 detached

single-family homes, 111 townhomes, and 61 condominium apartments—containing approximately 417,802 square feet of gross floor area and a floor-area ratio (“FAR”) of 0.83. As discussed below, these plans were superseded by subsequent plans.

2. At its public meeting held on November 14, 2005, the Commission voted to schedule a public hearing on the application.
3. On March 30, 2006, the Applicants submitted a Pre-Hearing Statement, along with revised Architectural Plans and Elevations, marked as Exhibit 26 of the record in this case (the “March 30<sup>th</sup> Plans”). The March 30<sup>th</sup> Plans superseded the plans originally filed with the application. These revisions to the site plan eliminated 11 of the originally planned townhouses, reducing the total number of units in the development from 199 to 188. These changes also reduced the overall density of the development from 0.83 FAR to 0.78 FAR.
4. On June 28, 2006, the Applicants submitted a Supplemental Pre-Hearing Statement, Exhibit 36, further refining the March 30<sup>th</sup> Plans. These refinements removed an additional townhouse (reducing the total number of dwelling units to 187), closed a proposed driveway, and included details requested by the District Department of Transportation (“DDOT”). The overall density of the project was reduced further from 0.78 FAR to 0.77 FAR.
5. After proper notice, the Commission held a public hearing on the application on July 20, 2006 and September 7, 2006. The parties to the case were the Applicants; Advisory Neighborhood Commission (“ANC”) 4B, the ANC within which the property is located; and Citizens Aware Block Organization, a party in opposition to the application.
6. The Applicants presented five witnesses at the Commission's hearing of July 20, 2006 including N. William Jarvis, The Jarvis Company, LLC; Geoffrey Ferrell, Ferrell Madden Associates; Arthur Lohsen, Franck Lohsen McCrery; Edward Papazian, Kimley-Horn and Associates, Inc.; and Steven E. Sher, Holland & Knight, LLP. Based upon their professional experience, as evidenced by the resumes submitted for the record, and prior appearances before the Commission, Messrs. Jarvis, Ferrell, Lohsen, Papazian, Sher, Jeter, and Mingonet were qualified by the Commission as experts in their respective fields.
7. Keith White of the Lamond Community Action Group testified in support of the project.
8. A number of individuals filed letters with the Commission and testified in opposition to the project. The letters and testimony raised a number of issues, but the primary concerns included: (a) the impact of the increase in the area’s population on the character of the surrounding area, as well as a desire that the Subject Property be developed with detached single-family dwellings under the existing zoning; (b) the impact of the

development on peak-hour traffic in the vicinity; and (c) the impact of development on public facilities and infrastructure.

9. ANC 4B did not take an official position on the proposed project. At its September 5, 2006 meeting, ANC 4B voted on a motion to recommend disapproval of the proposed PUD. The vote resulted in a tie. As noted in a subsequent e-mail communication from Gottlieb Simon, Executive Director of the Office of Advisory Neighborhood Commissions, Exhibit 86, all ANC motions fail on a tie vote.
10. On September 7, 2006, the Applicants submitted additional revisions to the March 30<sup>th</sup> Plans. These revisions, Exhibit 83, included a reduction in the total number of dwelling units from 187 to 169, greater detail regarding the “great lawn,” and a reduction in the overall density to 0.73 FAR.
11. The Applicants submitted a Post-Hearing Statement on September 21, 2006, Exhibit 88, which revised the site plan to remove six parking spaces, as requested by the Commission at the hearing. The submission also provided supplemental data regarding accident information for the surrounding area and revised trip-generation rates based upon the Applicant's reduction in the number of units from 187 to 169.
12. At its public meeting held on Monday, October 16, 2006, the Commission took proposed action to approve, with conditions, the application and plans that were submitted into the record.
13. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the District Charter. NCPC, by action dated October 26, 2006, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, or be inconsistent with the Comprehensive Plan for the National Capital.
14. The Zoning Commission took final action to approve the application on December 11, 2006.

### **The PUD Project**

15. The proposed PUD, as finally revised, included a residential development of 169 units - 38 detached single-family dwellings, 73 townhomes, and 58 condominium apartments - containing approximately 369,684 square feet of gross floor area. The project will offer 14 units (3 townhomes and 11 condominiums) as affordable housing. The affordable apartment units will be distributed vertically and horizontally throughout the two apartment buildings. The three affordable townhouse units will be interior units randomly distributed with not more than one per group of townhouses. The project will have an overall density of 0.73 FAR and a maximum building height of 40 feet for the

townhouses and single family homes. The minimum required parking under the Zoning Regulations is 169 spaces; the PUD will provide 268 on-site parking spaces and 70 additional spaces on the private streets in the development.

16. The Subject Property consists of Parcels 126/24 and 126/74; Lots 69, 70, 71, 72, 73, 801, 824, and 826 in Square 3714; and Lot 858 in Square 3719 and contains approximately 505,062 square feet of land area. The Subject Property is currently improved with two vacant buildings that previously housed the Masonic and Eastern Star Nursing Home and Infirmary, but were most recently used as offices for Med-Star Health. The Applicant will convert these vacant structures into condominium apartments.
17. The project includes a number of green spaces to complement the low-density residential character of the surrounding neighborhood. These landscaped areas include a centrally located "great lawn," encompassing approximately 23,580 square feet of open space, as well as a number of smaller parks and gardens. The project includes more than 186,000 square feet of green space within the development.
18. The proposed project is consistent with the surrounding zoning and land uses. The Subject Property is located in the Northeast quadrant of the District near the Maryland border. The Subject Property is zoned R-1-B and is surrounded primarily by property that is also zoned R-1-B. The Comprehensive Plan designates the area to the north, east, and south of the Subject Property in the low-density residential land use category. The area to the west of the property is designated in the low-density residential and production and technical employment land use categories.

#### **Matter-of-Right Development Under Existing Zoning**

19. The Subject Property is currently zoned R-1-B. The R-1 Districts are intended to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes. (11 DCMR § 200.1.) The R-1 Districts are subdivided into R-1-A and R-1-B, providing for districts of very low and low density, respectively. (11 DCMR § 200.3.) The R-1-B District permits a maximum height of 40 feet and three stories. (11 DCMR § 400.1.) Lots in the R-1-B District are required to have a minimum lot area of 5,000 feet and a minimum lot width of 50 feet. (11 DCMR § 401.3.) A maximum density is not prescribed in the R-1-B District. (11 DCMR § 402.4.) One-family detached dwellings are permitted in the R-1-B District. (11 DCMR § 201.1(a).) Parking is required at a rate of one parking space for each dwelling unit. (11 DCMR § 2101.1.) Under the PUD guidelines for the R-1-B District, the maximum permitted height for a residential use is 40 feet and the maximum density is 0.4 FAR. (11 DCMR §§ 2405.1, 2405.2.)

### **Matter-of-Right Development Under Proposed Zoning**

20. Under the proposed PUD, the zoning of the Subject Property would become R-5-A. The R-5 Districts are General Residence Districts intended to permit flexibility of design by permitting in a single district all types of urban residential development if they conform to the established height, density, and area requirements. (11 DCMR § 350.1.) The R-5-A District permits low height and density developments. (11 DCMR § 350.2.) The R-5-A District permits a maximum height of 40 feet and a maximum density of 0.9 FAR for all structures. (11 DCMR §§ 400.1, 402.4.) Parking in the R-5-A District is required at a rate of one space for each dwelling unit. (11 DCMR § 2101.1.) Under the PUD standards for the R-5-A District, the maximum permissible height is 60 feet. (11 DCMR § 2405.1.) The PUD standards for the R-5-A District permit a maximum density of 1.0 FAR for residential uses. (11 DCMR § 2405.2.)

### **Development Incentives and Flexibility**

21. The Applicants requested the following areas of flexibility from the Zoning Regulations:
- a. *Flexibility from §§ 410 and 2516.* Section 410.1 provides that in an R-5 District, if approved by the Board of Zoning Adjustment as a special exception, a group of one-family dwellings, flats, or apartment houses, or a combination of these buildings, with division walls erected from the ground or lowest floor up, may be erected and deemed a single building for the purpose of the Zoning Regulations. (11 DCMR § 410.1.) Section 2516 allows multiple buildings on a single, subdivided record lot, which is useful where—as here—there are large, deep lots having a smaller amount of street frontage.
- As shown on the proposed site plan, Exhibit 83, the Applicants proposed to erect the townhomes in groups of buildings. All buildings in each group will be erected simultaneously, and all front entrances of the group will abut either a street, front yard, or front court. However, since the Subject Property has a large land area compared to the amount of street frontage, the Applicants proposed that the Commission treat each grouping of townhomes as a single building for the purpose of the Zoning Regulations so that each individual dwelling need not satisfy all the area and bulk provisions.
- b. *Flexibility from Yard Requirements.* Pursuant to § 405.9, side yards provided in the R-5-A District must have a minimum width of eight feet. A rear yard with a minimum depth of 20 feet is also required. (11 DCMR § 404.1.) For lots having no street frontage, a front yard equal to the minimum required rear yard is also required by § 2516.5(b). The Applicants requested flexibility from these requirements, because a number of the yards provided will be less than the required width. As shown on the proposed site plan, Exhibit 83, the Applicants

designed the layout of the proposed development to meet as many of the applicable zoning requirements as possible. However, due to design and massing features of the project, and the clustering of units to ensure open space, a number of units will not have complying yards. However, the project will include a significant amount of open space, as the overall lot occupancy is approximately 26.6 percent, and approximately 36.9 percent of the Subject Property will be devoted to open, green space.

### **Public Benefits and Amenities**

22. The Commission finds that the following benefits and amenities will be created as a result of the PUD:
- a. *Housing and Affordable Housing.* The single greatest benefit to the area, and the city as a whole, is the creation of new housing consistent with the goals of the Comprehensive Plan and the Mayor's housing initiative. The proposed PUD will contain approximately 369,684 square feet of gross floor area dedicated to residential uses. The Applicants will convert the two vacant buildings on the Subject Property into condominium buildings. The adaptive reuse of these buildings as housing is compatible with the surrounding residential uses and will enhance the residential character of the neighborhood. The project will include 14 units – three townhomes and 11 condominium apartments - reserved as affordable units. Eligible purchasers will be families and individuals whose annual incomes are no more than 80 percent of the area median income.
  - b. *Urban Design, Architecture, Landscaping, and Open Space.* The quality of architectural design in the proposed development exceeds that of most matter-of-right projects. The PUD's buildings will further the goals of urban design and enhance the streetscape and surrounding neighborhood.

The project will have an overall lot occupancy of 26.6 percent, or 13.4 percent less than the maximum lot occupancy of 40 percent permitted as a matter of right in both the R-1-B and R-5-A Districts. The open spaces will be distributed throughout the site and will include "civic greens" that will serve as common focal open spaces.

The proposed project will include an extensive landscaping program. Street trees will be planted in relatively close proximity, lining the streets with their trunks and shading the walks and fronts of the houses with their canopies. Elm trees, which were devastated in the past by disease, will be reintroduced in the form of new, disease-resistant cultivars such as the Liberty Elm. Red maple trees will surround the public green spaces, accenting them as special places with their dramatic foliage. Evergreen trees will be used as screening elements to contain undesirable views and provide privacy where appropriate.

- c. *Employment and Training Opportunities.* The Applicants entered into a First Source Employment Agreement with the Department of Employment Services, marked as Exhibit E in the Applicants' Pre-Hearing Statement. The Applicants also entered into a Local, Small, and Disadvantaged Business Enterprises (“LSDBE”) Memorandum of Understanding with the District's Department of Small and Local Business Development, marked as Exhibit F in the Applicants' Pre-Hearing Statement.
- d. *Other Public Benefits and Project Amenities.* The Applicants committed to install a new traffic signal at the intersection of Quackenbos Place and New Hampshire Avenue and to upgrade the reflective striping for all crosswalk connections to the project site. The Applicants also committed to make contributions totaling \$150,000 to various schools and community groups, consistent with the Parties’ Memorandum of Understanding, as outlined below:
- i) \$5,000 for a sign or signs that will identify the Lamond community; such sign or signs to be delivered to the Lamond Community Action Group for approval by the District Department of Transportation regarding placement;
  - ii) \$60,000 for a total of 50 computers (the budget for each computer being \$1,200), with 10 desktop computers delivered to LaSalle Elementary School, 10 desktop computers delivered to Whittier Elementary School, and 30 laptop computers delivered to Coolidge High School;
  - iii) \$20,000 to the Lamond-Riggs Athletic Association for the acquisition of trophies and uniforms for use by its youth programs and for the establishment of a tutoring program sponsored and administered by this entity;
  - iv) \$20,000 to the new Lamond Recreation Center for 10 laptop computers (the budget for each computer being \$1,200) and a contribution to the Center’s programs focused on the senior citizens in the community; and
  - v) \$45,000 to the Friends of the Lamond Riggs Library for signage, exterior lighting, security systems, and improvements to its ventilation system.

**Compliance with the Comprehensive Plan**

23. The proposed PUD will advance the purposes of the Comprehensive Plan, is consistent with the Generalized Land Use Map, and furthers the major themes and elements for the

District and Ward 4 in the Comprehensive Plan. The project will advance these purposes by promoting the social, physical, and economic development of the District by providing a quality residential development that is affordable to a range of incomes and the replacement of a primarily unimproved property with development that will enhance the built environment.

24. The proposed rezoning is consistent with the Generalized Land Use Map, which designates the Subject Property in the low-density residential land use category. The project will have an overall density of 0.73 FAR, which is below the effective density of 1.2 FAR (40 percent lot occupancy times three stories) permitted in the R-1-B District. Furthermore, the R-5-A District is designated as a low-density multifamily dwelling district under the Zoning Regulations. The number of units proposed is fewer than 15 units per acre. The R-1-B District permits approximately 8.5 units per acre, the R-2 District permits approximately 14 units per acre, and the R-3 District permits approximately 22 units per acre. The proposed development is within the limits of the range of these single-family zones.

Further, the overall density of the broad swath designated for low-density residential land uses along the northeastern boundary of the District will remain essentially unchanged. Since the Generalized Land Use Map does not establish the density permitted on each site, the Zoning Commission can appropriately increase the density on a particular site as long as the overall character and density are maintained. The Subject Property is the only large undeveloped residential site in this area. Allowing the density proposed with the clustered site plan will result in a variety of housing types for different segments of the local housing market, consistent with other policies of the Comprehensive Plan discussed below.

25. The PUD is also consistent with many of the Comprehensive Plan's major themes, as follows:
- a. *Stabilizing and Improving the District's Neighborhoods.* The proposed PUD will increase the availability and variety of housing in the District. The inclusion of a number of affordable housing units will increase housing opportunities in Ward 4 and the District.
  - b. *Increasing the Quantity and Quality of Employment Opportunities in the District.* The Applicants have entered into both a First Source Employment Agreement with the Department of Employment Services and a Local, Small, and Disadvantaged Business Enterprises Memorandum of Understanding with the District's Department of Small and Local Business Development.
  - c. *Respecting and Improving the Physical Character of the District.* The PUD will improve the physical character of the District through the construction of a well-



planned and carefully designed development that will provide a mix of housing types and will include affordable housing units.

- d. *Reaffirming and Strengthening the District's Role as an Economic Hub.* The Comprehensive Plan encourages maximum use of the District's location for both private and public growth to promote economic development. Housing construction for all income levels is paramount to the success of the economic goals of the District. This mixed-income, mixed-housing type project will further this theme by incorporating residential development to promote the economic health and well-being of the region.
  - e. *Preserving and Ensuring Community Input.* The Comprehensive Plan also encourages the active involvement and input of local communities. The Applicants met a number of times with the ANC and local community groups to review the project plans and develop an amenities package.
26. The Commission finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:
- a. *Housing Element.* Housing in the District is viewed as a key part of a total urban living system that includes access to transportation and shopping centers, the availability of employment and training for suitable employment, neighborhood schools, libraries, recreational facilities, playgrounds, and other public amenities. (10 DCMR § 300.4.) The District recognizes its obligation to facilitate the availability of adequate affordable housing to meet the needs of current and future residents. The District strives to provide a wider range of housing choices and strategies through the production of new units for a variety of household types. (10 DCMR §§ 300.1 – 300.2.)  
  
The proposed PUD will further this goal by providing approximately 369,684 square feet of gross floor area dedicated to residential uses, including 14 units of affordable housing integrated throughout the development.
  - b. *Urban Design Element.* The Urban Design Element states that the District's goal is to promote the protection, enhancement, and enjoyment of the natural environs and to promote a built environment that serves as a complement to the natural environment, provides visual orientation, enhances the District's aesthetic qualities, emphasizes neighborhood identities, and is functionally efficient. (10 DCMR § 701.1.) The Urban Design Element also encourages new construction or renovation/rehabilitation of older buildings in areas with vacant or underused land or structures in order to create a strong, positive physical identity. (10 DCMR § 712.1.)

The proposed PUD has been designed to enhance the physical character of the area and complement the materials, height, scale, and massing of the surrounding development. (10 DCMR § 708.2.)

The streetscape objective of this element is to establish a clear classification of streets and sidewalks that is functionally efficient and visually coherent, enhances the pedestrian experience, and provides for the orderly movement of goods and services. (10 DCMR § 709.1.) The new private streets will be laid out to minimize traffic through the site, encourage safe speeds, and provide off-street parking. Alleys will be provided behind all units, allowing rear-loaded garages, trash collection, and utility connections behind the units, rather than at the front.

- c. *Land Use Element.* The Land Use Element encourages a substantial amount of new housing in order for the District to perform its role as the region's urban center providing the greatest density of jobs and housing. (10 DCMR § 1100.2.) Policies designed to support residential neighborhoods include promoting the enhancement and revitalization of District neighborhoods for housing and related uses, ensuring a broad range of residential neighborhood options, and providing wide-ranging assistance for neighborhoods of relatively poor quality by joint public and private action and concentrated governmental attention and resources. (10 DCMR §§ 1104.1(a), (c), and (e) and § 1118.6.) The proposed PUD responds to these goals with the development of a high-quality residential project that includes housing opportunities for a range of incomes.

27. The Project also fulfills and furthers the specific objectives for this area, as set forth in the Ward 4 Element:

- a. *Ward 4 Housing Element.* A primary objective for housing in Ward 4 is to provide for the housing needs of low- and moderate-income households, and the Ward 4 Housing Element calls for stimulating new and rehabilitated housing to meet all levels of need and demand. (10 DCMR §§ 1508.1(a) and 1509.1(a).) The proposed PUD will contain approximately 369,684 square feet of gross floor area dedicated to residential uses, including 14 units of affordable housing.
- b. *Ward 4 Transportation Element.* An objective for transportation in Ward 4 is to support the living environment and commerce of the ward and the District and to support development objectives for expanded housing opportunities for ward residents. (10 DCMR § 1514.1(a).) Moreover, one of the policies in support of transportation is to continue to require developers to provide appropriate traffic studies and mitigation measures prior to major development. (10 DCMR § 1515.1(a)(2)(D).)

The Applicants submitted a traffic impact study with the original PUD application, Exhibit 2. As indicated in the study, the proposed development will

have no effect on the levels of service at intersections in the vicinity of the Subject Property, which will continue to operate at levels of service A and B. The traffic impact study also concluded that the number of proposed parking spaces satisfied both the Zoning Regulations and the practical requirements of the development and, as a result, there would be no spillover parking into the surrounding community.

- c. *Ward 4 Urban Design Element.* The objectives for urban design in Ward 4 include preserving and enhancing the physical qualities and character of the ward's neighborhoods through preservation and enhancement of its built environment and encouraging well-designed developments in areas that are vacant, underused, or deteriorated. (10 DCMR §§ 1520.1(a), (b).) The PUD's buildings will further the goals of urban design and enhance the streetscape and surrounding neighborhood. A mix of unit types will be provided including condominium units of varying sizes, townhomes, and detached single-family residences. All will be brick on all four sides, reflecting the homes in the surrounding neighborhoods. When complete, the new structures will blend well not only with each other, but also with the residences found in the neighboring communities.
- d. *Ward 4 Land Use Element.* A key land use concern in Ward 4 is preserving, protecting, and stabilizing the ward's residential neighborhoods. (10 DCMR §§ 1528.11(a) and 1529.1(a).) The proposed PUD responds to these goals with the development of a high-quality project that includes housing opportunities for a range of incomes.

### **Office of Planning Report**

28. By report dated June 30, 2006, the Office of Planning ("OP") recommended approval of the PUD application. OP found that the proposed PUD was consistent with the intent of the Zoning Regulations, the specific PUD criteria outlined in the Zoning Regulations, and the Comprehensive Plan. OP also found that the benefits and amenities associated with the PUD exceeded the degree of zoning relief required and that the proposed development would be an asset to the community. OP recommended approval of the application and an amenities package that included (i) submission of a legally-binding homeowners' agreement regarding maintenance of private streets, subject to DDOT review and (ii) installation of traffic mitigation measures, including installation of required signs and traffic signals.
29. The Applicants submitted revisions to the Inclusionary Housing Commitment Standards, Exhibit 84, which set forth the manner in which the Applicants will provide affordable housing.

### **Other Government Agency Reports**

30. The D.C. Fire and Emergency Medical Services Department (“FEMS”) submitted a memorandum, dated May 17, 2006, indicating that the streets in the proposed development will be adequate for fire and emergency medical services response as long as personal vehicles in the development are properly parked. FEMS recommended that all fire hydrants in the proposed development be placed on street corners, rather than in the middle of street blocks.
31. The D.C. Water and Sewer Authority (“DCWASA”) submitted a memorandum, dated June 2, 2006, noting that existing water mains and sanitary sewers can adequately supply water to, and manage sanitary flows from, the proposed development. DCWASA indicated it will not own, operate, or maintain the private storm water management system the Applicants intend to construct for the project.
32. The Department of Housing and Community Development (“DCHD”) submitted a letter, dated June 7, 2006, indicating that DCHD supported the proposed PUD.
33. The District Department of Transportation submitted a memorandum, dated July 6, 2006, indicating that DDOT had no objections to the current project proposal provided the Applicants install a new traffic signal at the intersection of Quackenbos Place and New Hampshire Avenue and upgrade the reflective striping for all crosswalk connections to the project site.

### **Contested Issues**

34. The major concerns raised by the party and persons in opposition to the application were (a) increased traffic congestion; (b) unacceptably high development density; (c) inadequate storm water management and drainage; (d) the use of homeowners association fees to maintain common areas in the development; (e) insufficient time to review agency reports; (f) the lack of community input; and (g) the possibility that the proposed dog park will attract rodents.
35. The Commission makes the following findings:
  - a. *Increased Traffic*: The Commission is not persuaded that the proposed development will significantly increase congestion on adjacent roadways beyond a matter-of-right development. DDOT noted in its report, however, that nearby signalized intersections will continue to operate at an acceptable level of service - level of service B - or better, following the project’s completion. Moreover, the Applicants’ traffic expert submitted detailed reports (Exhibit 2, Tab F thereto; Exhibit 26, Tab B thereto; and Exhibit 88, Tab B thereto) concluding that area intersections will all operate at acceptable conditions with the development in place. The report also

indicated that the proposed development will have no effect on the intersection levels of service and they will continue to operate at levels of service A or B, and that the proposed multiple driveways and vehicle circulation system will provide the opportunity for the dispersal of site traffic and will operate in a safe and efficient manner. Moreover, sufficient on-site parking will be provided on the Subject Property, which will result in no spillover of parking into the surrounding community. The Commission accepts the expert conclusions and finds that the proposed development will not significantly increase traffic congestion in the area or otherwise have an adverse impact.

- b. *Increased Density:* The Commission is not persuaded that the density of the proposed PUD will conflict with the residential character of the surrounding community. The effective maximum density under the subject property's current zoning classification (R-1-B) is 1.2 FAR (40 percent lot occupancy times three stories), whereas the proposed project will have a density of 0.73 FAR. The proposed development is within the limits of the density range of single-family zones. The Commission thus finds that the project's proposed density is not inconsistent with the land use map designation for the Subject Property and will not have an adverse impact on the surrounding community.
- c. *Storm Water Management:* The Commission does not find that the proposed development will exacerbate drainage problems currently affecting the Subject Property. The PUD will include a storm water management system and underground sand filtration system. The Applicant performed drainage calculations in accordance with the D.C. Department of Health's Stormwater Management Guidebook and determined that the post-development discharge rates for the Subject Property will be at or below the pre-development rates for both two-year and 15-year storm events. Additionally, DC WASA did not express any concerns about potential drainage problems attributable to the proposed development.
- d. *Homeowners Association Fees:* The Commission does not find that the assessment of homeowners association fees, a portion of which will be used to maintain common areas in the development, will have an adverse impact on the development or the surrounding community. Indeed, the community center and green spaces in the development will be available for use by members of the surrounding community.
- e. *Time to Review Agency Reports:* The various agency reports regarding the proposed development were filed in advance of the deadline prescribed by 11 DCMR § 3012.3 and have been a matter of public record since they were filed. The Commission finds that adequate time was provided for public review of the agency reports.
- f. *Community Input:* The Applicants met with the ANC and other community groups on 20 occasions to review the project plans and develop an amenities package, as

shown by Exhibit 51. The PUD project was modified in response to community feedback. The Commission finds that the Applicants engaged in efforts to solicit community input and incorporated that input into the proposed project where feasible.

- g. *The Dog Park*: The Applicants will improve the currently vacant land on Parcel 126/24 with a landscaped dog park. The Commission finds that the proposed dog park is a part of the Applicants' overall green space plan, which is a valuable project amenity, and will not adversely affect the public interest.

### **CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments that offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential uses for this project are appropriate for the PUD Site. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project can be approved.
6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

7. The Applicants' request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility.
8. Approval of this PUD is appropriate, because the proposed development is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give great weight to the issues and concerns stated by the affected ANC. In this case, ANC 4B has not taken an official position on the proposed PUD.
10. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the Application for consolidated review and approval of a planned unit development ("PUD") and a related application to amend the Zoning Map from the R-1-B to the R-5-A District for the Site, subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans prepared by Franck Lohsen McCrery Architects, dated March 30, 2006, marked as Exhibit 26 in the record (the "Plans"); as modified by Exhibit 83 and Exhibit 88; and as further modified by the guidelines, conditions, and standards herein.
2. The PUD shall be a residential development as shown on the approved plans. The PUD shall have a maximum density of 0.73 FAR and a combined gross floor area of no more than 369,684 square feet. The project shall contain no more than 169 dwelling units, including 38 single-family dwellings, 73 townhomes, and 58 condominium apartments. The Applicants shall be permitted to adjust the layout, configuration, and number of apartment units, provided the total number of units (169) is not exceeded.
3. The maximum height of the townhomes and single family homes shall not exceed 40 feet.
4. Fourteen units (3 townhomes and 11 condominiums) shall be reserved and offered as affordable housing as specified in the Planned Unit Development Inclusionary Housing Commitment Standards included as Exhibit 84.

5. The project shall include a minimum of 268 off-street parking spaces.
6. The landscaping, streetscape, and open-space treatment for the project shall be constructed and installed as shown on the Plans and shall be maintained and kept in good, clean, attractive, and sanitary condition. This maintenance shall include, but need not be limited to, maintenance, repair, and replacement of all landscaping and other flora, structures, and improvements, streets, and rights-of-way, and other green spaces, parks, or open areas shown on the plans, marked as Exhibit 26, and such portions of any additional property included within the area of common responsibility as may be dictated by the Homeowners Association documents. All costs required to maintain and keep in good, clean, attractive, and sanitary condition the areas of common responsibility shall be borne by the unit owners as part of an assessment in a ratio to be determined by the Homeowners Association.
7. Landscaping in the public space on the surrounding public streets shall be in accordance with the Plans, as approved by the Public Space Division of DDOT. The Applicants or their successors shall maintain all landscaping in the public space.
8. The Community Room shall be open to both the general public and residents of the development pursuant to terms, procedures, and conditions to be adopted by the Homeowners Association, including, but not limited to, terms and restrictions concerning facility and meeting room capacity, operating hours, reservation fees, deposits, and usage restrictions.
9. No building permit shall be issued for this PUD until the Applicant has submitted to the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA) evidence demonstrating that the Applicant has purchased, or provided the funding to purchase, the items identified in the community amenities package, marked as Exhibit 80, and described in Finding of Fact 22 (d).
10. The Applicants shall have flexibility with the design of the PUD in the following areas:
  - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not change the exterior configuration of the building;
  - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials;



- c. To make minor refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other minor changes to comply with the District of Columbia Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals; and
  - d. To make minor refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, as long as the number of parking spaces does not decrease below the minimum number specified.
12. No building permit shall be issued for this PUD until the Applicants have recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicants and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.
13. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicants have filed a copy of the covenant with the records of the Zoning Commission.
14. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.
15. The Applicants are required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicants to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

Z.C. ORDER NO. 05-30

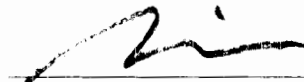
Z.C. CASE NO. 05-30

PAGE 18

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on JAN 19 2007.



CAROL J. MITTEN  
Chairman  
Zoning Commission



JERRILY R. KRESS, FAIA  
Director  
Office of Zoning



**DISTRICT OF COLUMBIA GOVERNMENT  
OFFICE OF THE SURVEYOR**

Washington, D.C., September 3, 2005

Plan for Building Permit of SQUARE 3714 LOTS 69,70,71,72,73,801,824,826

Scale: 1 Inch = 30 feet Recorded in Book 49 Page 2 (LOTS 69-73)  
Book A&T Page 785 (LOTS 801,824 & 826)

Receipt No. 22418

Furnished to: HOLLAND & KNIGHT - FREDA

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.)

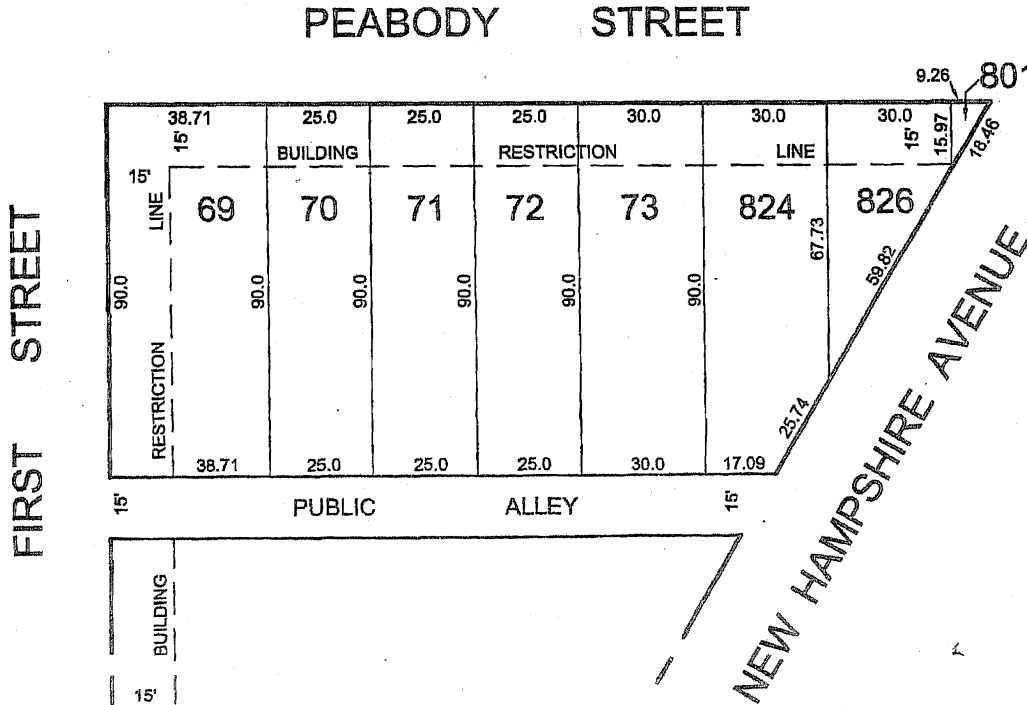
Date: \_\_\_\_\_

*Robert A. Smith*  
Surveyor, D.C.

By: L.M.A. *Lee*

\_\_\_\_\_  
(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.



ZONING COMMISSION  
CASE No. 15-80  
EXHIBIT No. 3

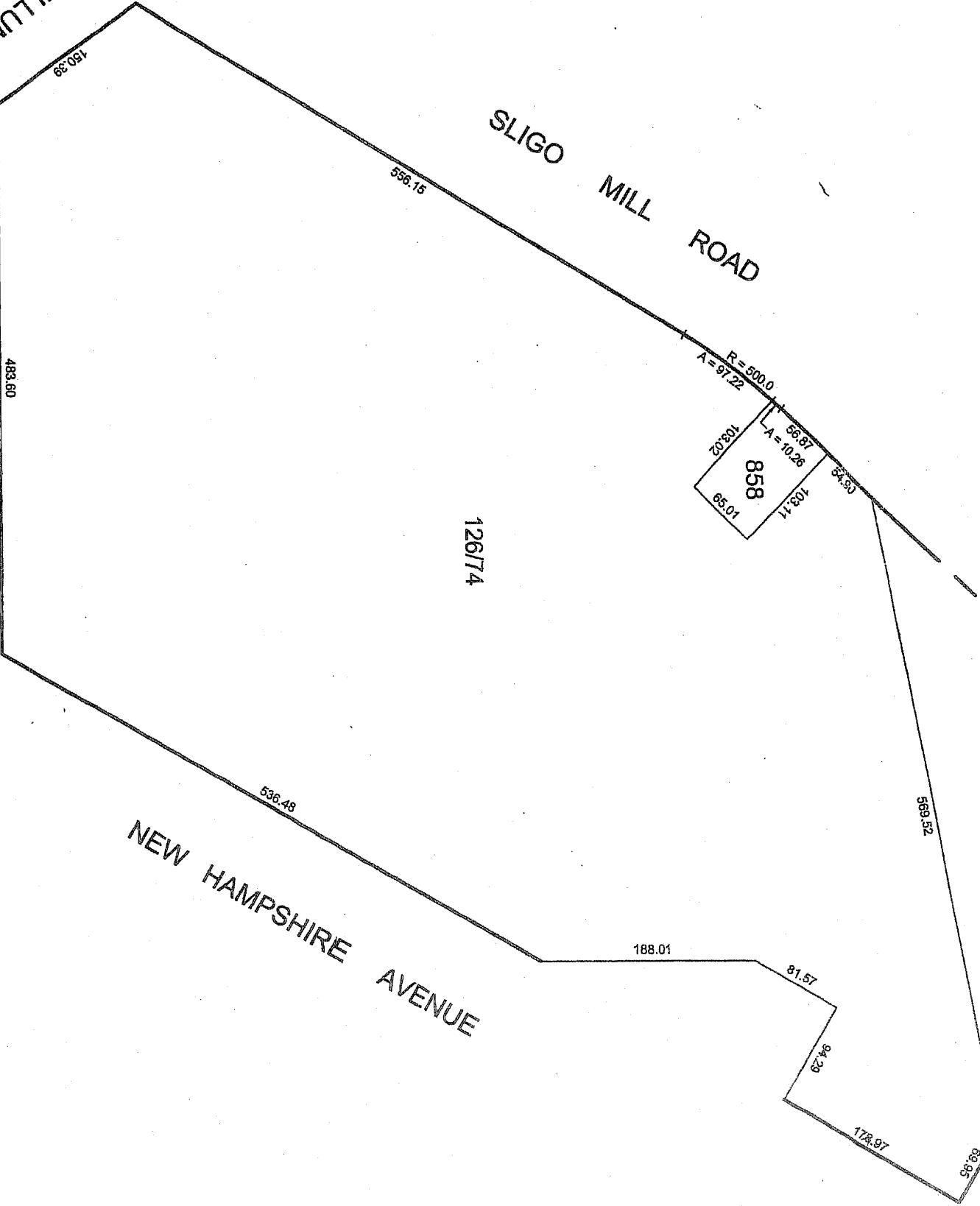
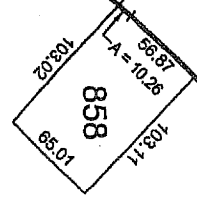
CHILLUM PLACE

SLIGO MILL ROAD

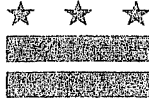
NEW HAMPSHIRE AVENUE

WINDHOUS STREET, SE

126774



*Government of the District of Columbia*  
OFFICE OF ZONING



**Z.C. CASE NO.: 05-30**

As Secretary to the Commission, I hereby certify that on JAN 12 2007 copies of this Z.C. Order No. 05-30 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Norman M. Glasgow, Jr., Esq.  
Holland & Knight, LLP  
2099 Pennsylvania Ave., N.W.  
Washington, D.C. 20006
3. Cherita Whiting, Chair  
ANC 4B  
414 Oneida Street, NE  
Washington, DC 20011
4. Commissioner Judi Jones  
ANC/SMD 4B07  
25 Sheridan St NW  
Washington, DC 20011
5. Gottlieb Simon  
ANC  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004
6. Office of Planning (Jennifer Steingasser)
7. Ken Laden, DDOT
8. Zoning Administrator (Bill Crews)
9. Jill Stern, Esq.  
General Counsel - DCRA  
941 North Capitol Street, N.E.  
Suite 9400  
Washington, D.C. 20002
10. Office of the Attorney General (Alan Bergstein)

ATTESTED BY:

**Sharon S. Schellin**  
Secretary to the Zoning Commission  
Office of Zoning

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION ORDER NO. 05-30A**  
**Z.C. CASE NO. 05-30A**  
**West\*Group Development Company, LLC**  
**Consolidated Planned Unit Development and Map Amendment –**  
**6000 New Hampshire Avenue, N.E.**  
**July 14, 2008**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on July 14, 2008. At the meeting, the Commission approved a request from the West\*Group Development Company, LLC and The Jarvis Company, LLC, the developers, on behalf of 6000 New Hampshire Avenue, LLC, the owner of the subject property (collectively, the "Applicant") for a time extension for an approved planned unit development ("PUD") and related zoning map amendment for property consisting of Parcels 126/24 and 126/74, and Lots 69, 70, 71, 72, 73, 801, 824, and 826 in Square 3714, and Lot 858 in Square 3719 ("the Subject Property") pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations. The Commission determined that this request was properly before it under the provisions of § 2408.10 of the Zoning Regulations.

**FINDINGS OF FACT**

1. By Order No. 05-30, the Commission approved a consolidated PUD and related zoning map amendment (from R-1-B to R-5-A) to allow construction on the Subject Property of a residential development with an overall maximum density of 0.73 FAR and a combined gross floor area of no more than 369,684 square feet. The project will contain 169 dwelling units, including 38 single-family dwellings, 73 townhomes, and 58 condominium apartments. The order became effective January 19, 2007, and would expire on January 19, 2009.
2. By letter dated and received by the Commission on June 13, 2008, the Applicant filed a request to extend the validity of the PUD approval for a period of two years, such that an application must be filed for a building permit no later than January 19, 2011, with construction to start no later than January 19, 2012. The letter indicates that the project has experienced delay beyond the Applicant's control, specifically, difficulties with financing based upon changes in economic and market conditions, as well as the filing of a lawsuit after approval of the PUD.

3. Subsequent to the Commission's approval of the PUD, a lawsuit was initiated against the Applicant regarding the purchase, development and sale of the subject property. The case was filed in D.C. Superior Court on November 7, 2006 and assigned case number 06-008142. The complaint is a matter of public record. The litigation settled in November, 2007.
4. The recent changes in the economy and residential housing market conditions, combined with predictions that housing values will continue to decline, has resulted in a lack of willingness on the part of lenders to finance the project. The Applicant's investment partner decided to stop all funding requests for new residential projects until market conditions improved. In addition, the lender on the project refused to grant any further extensions on the land loan, which will now have to be replaced with another source of funds. As the value of the underlying property has decreased over the last 18 months, all banks considering replacing the original lender are willing to provide less debt. The difference must be made up by the Applicant. That additional equity requirement means that the owner/developer must spend the monies previously allocated for land development to cover the difference between the new loan and the original loan. As such, the Applicant is delayed until the market stabilizes before it is able to raise the necessary funding to begin the project.
5. The other parties to this application were Advisory Neighborhood Commission ("ANC") 4B and the Citizens Aware Block Organization ("Citizens Aware"). The Applicant served a copy of this request on both parties. By letter dated and filed with the Commission on July 11, 2008, ANC 4B requested that the Commission schedule a special hearing on the extension request so that ANC 4B could confer with its constituents regarding the existence of pending litigation and the Applicant's inability to obtain sufficient project financing because of changes in economic market conditions. ANC 4B's letter did not dispute that the Applicant served the extension request on all parties, nor did ANC 4B's letter dispute that there is no substantial change in any of the material facts upon which the Commission based its original approval of the planned unit development. By letter dated and filed with the Commission on July 11, 2008, Citizens Aware stated that it met with the Applicant, who explained the background regarding the extension request and answered questions from the community. Citizens Aware concluded in its letter that a public hearing should not be required since the group confirmed the existence of the lawsuit and is well-aware of the conditions in today's real estate market.

### **CONCLUSIONS OF LAW**

The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties and all parties are allowed thirty (30) days to respond; (b) there is no substantial change in any material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) there is good cause for the extension based on the criteria established in § 2408.11. (11 DCMR § 2408.10.) The three

criteria are: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order. (11 DCMR § 2408.11.)

The Commission concludes the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them thirty (30) days to respond.

The Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11, and the hearing shall be limited to the specific and relevant evidentiary issues in dispute. (11 DCMR § 2408.12.)

The Commission concludes that no hearing is necessary because there is no material factual conflict regarding the criteria set forth in § 2408.11, and the parties have been given the period of time to respond stated in the Zoning Regulations.

The Commission concludes there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.

The Commission concludes the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a), the Applicant's inability to obtain sufficient project financing for the PUD, following its diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond its control. The project has experienced delay beyond the Applicant's control, specifically, difficulties with financing based upon changes in economic and market conditions. The Applicant also presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(c), the existence of pending litigation that renders the applicant unable to comply with the time limits of the PUD order.

The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

The approval of the time extension is not inconsistent with the Comprehensive Plan.



**DECISION**

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the application for a two-year time extension of the approved PUD in Zoning Commission Case No. 05-30, Order No. 05-30.

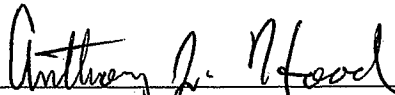
The final PUD approved by the Commission shall be valid until January 19, 2011, within which time an application shall be filed for a building permit, as specified in § 2409.1. Construction shall start no later than January 19, 2012.


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

For the reasons stated above, the Commission concludes that the Applicant has met the burden, it is hereby **ORDERED** that the application be **GRANTED**.

On July 14, 2008, the Zoning Commission approved this application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Curtis L. Etherly, Jr. Gregory N. Jeffries, and Michael G. Turnbull to approve; Peter G. May to approve by absentee ballot).

In accordance with the provisions of 11 DCMR §3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on MAR 13 2009.

  
\_\_\_\_\_  
**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
\_\_\_\_\_  
**RICHARD S. NERO, JR.**  
**ACTING DIRECTOR**  
**OFFICE OF ZONING**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



Z.C. CASE NO.: 05-30A

MAR 12 2009

As Secretary to the Commission, I hereby certify that on \_\_\_\_\_ copies of this Z.C. Order No. 05-30A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Norman M. Glasgow, Jr., Esq.  
Holland & Knight, LLP  
2099 Pennsylvania Ave., N.W.  
Washington, D.C. 20006
3. Douglass Sloan, Chair  
ANC 4B  
6856 Eastern Ave., NW, #314  
Washington, DC 20012
4. Commissioner Judi Jones  
ANC/SMD 4B07  
25 Sheridan St NW  
Washington, DC 20011
5. Gottlieb Simon  
ANC  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004
6. Councilmember Muriel Bowser
7. Office of Planning (Jennifer Steingasser)
8. DDOT (Karina Ricks)
9. General Counsel - DCRA  
941 North Capitol Street, N.E.  
Suite 9400  
Washington, D.C. 20002
10. Office of the Attorney General (Alan Bergstein)
11. Citizens Aware Block Organization  
Attn: Yvonne A. Jefferson  
6009 New Hampshire Avenue, N.E.  
Washington, D.C. 20011

ATTESTED BY:

Sharon S. Schellin  
Secretary to the Zoning Commission  
Office of Zoning

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 05-30B**

**Z.C. Case No. 05-30B**

**Four Points, LLC**

**(One-Year PUD Time Extension @ Parcels 126/24 and 126/74, Square 3714, Lots 69, 70-73, 801, 824, and 826, and Square 3719, Lot 858)**

**January 9, 2012**

Pursuant to notice, a meeting of the Zoning Commission for the District of Columbia ("Commission") was held on January 9, 2012. At the meeting, the Commission approved a request from 6000 New Hampshire Avenue, LLC ("Applicant") for a time extension for an approved planned unit development ("PUD") for property consisting of Parcels 126/24 and 126/74, Square 3714, Lots 69, 70, 71, 72, 73, 801, 824, and 826 and Square 3719, Lot 858 ("Subject Property") pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations ("DCMR").

**FINDINGS OF FACT**

1. Pursuant to Z.C. Order No. 05-30, the Commission approved a PUD for the Subject Property, which consists of Parcels 126/24 and 126/74, and Lots 69, 70, 71, 72, 73, 801, 824, and 826 in Square 3714, and Lot 858 in Square 3719, and contains approximately 505,062 square feet of land area.
2. The approved PUD includes construction of a residential development of 169 units – including 38 detached single-family dwellings, 73 townhomes, and 58 condominium apartments – containing approximately 369,684 square feet of gross floor area. Furthermore, the project will include 14 units (three townhomes and 11 condominiums) offered as affordable housing units. The affordable apartment units will be distributed vertically and horizontally throughout the two apartment buildings. The three affordable townhouse units will be units randomly distributed with not more than one per group of townhouses. The project will have an overall density of 0.73 floor area ratio ("FAR") and a maximum building height of approximately 40 feet for the townhouses and single-family homes. The project includes a total of over 186,000 square feet of green space within the development.
3. Pursuant to Z.C. Order No. 05-30A, which became final and effective on March 13, 2009, the Commission approved the validity of Z.C. Order No. 05-30 for a period of

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441 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: [dcoz@dc.gov](mailto:dcoz@dc.gov)

Web :

**ZONING COMMISSION**  
District of Columbia  
CASE NO.05-30B  
EXHIBIT NO.10

two years, such that a building permit application for the PUD must be filed no later than January 19, 2011 and construction must start no later than January 19, 2012.

4. The first of these two milestones was achieved on August 10, 2009 when an application for a building permit for the PUD was filed.
5. By letter dated and received by the Commission on December 2, 2011, the Applicant filed a request for a one year extension of Z.C. Order No. 05-30A such that construction must start no later than January 19, 2013. The Applicant's request was supported by an affidavit signed by the Applicant's representative setting forth the evidence that the project has been delayed beyond the Applicant's control.
6. The Applicant indicated that it contracted with a third-party contract purchaser to develop a portion of the approved PUD. During this time period, the third-party contract purchaser had complete site control. The third-party contract purchaser began designing the townhome portion of the approved PUD, and, as noted, submitted a building permit application on August 10, 2009. That permit was designated as application number B0908233, and was processed and received agency comments. However, in mid-2010 the third-party contract purchaser ceased working on the project due to economic uncertainties, and the third-party contract purchaser was not able to secure financing in order to move forward. The third-party contract purchaser's involvement in the project was subsequently terminated in March 2011 when a Termination Agreement was executed. The third-party contract purchaser's inability to move forward with its obligations under the executed purchase agreement, combined with the fact that they had complete site control for nearly two years, resulted in a delay beyond the Applicant's reasonable control.
7. The Applicant regained site control in March of 2011 after the Termination Agreement was executed. The Applicant then began working with a development partner, Comstock Homebuilding, Inc., rather than a contract purchaser, to diligently move forward with the approved project. The partners have engaged in a series of community meetings and began site engineering and architectural planning. Additionally, the development team has had meetings with the Zoning Administrator, the District Department of the Environment ("DDOE") and the District Department of Transportation ("DDOT") to clarify various design and code issues during the course of submitting various building permits to implement the PUD. In that regard, the Applicant has filed the permit applications listed below in order to move forward with the PUD:

a. **Model Homes Site Applications:**

i. **DDOE Application**

1. 8/17/2011- First Submission
2. 9/27/2011- Second Submission
3. 10/20/2011- Final Submission

ii. **DC Water Application**

1. 8/17/2011- First Submission
2. 9/29/2011- Second Submission
3. 10/27/2011- Final Submission
4. 11/18/2011- Review Fees Paid to DC Water

iii. **DDOT Application**

1. 8/25/2011- PDRM application and plans submitted
2. 10/6/2011 - PDRM meeting with DDOT
3. 11/25/2011- DDOT Surface Permit tracking numbers issued
4. 11/28/2011 - DDOT Subsurface Permit tracking numbers issued

iv. **Subdivision Plat**

1. 8/8/2011- Submitted plat and paid fees to Office Of Surveyor
2. 9/23/2011- Approved by DC Treasurer, Assessment Division
3. 9/27/2011- Historic Preservation Signature
4. 9/28/2011- Zoning Administrator Signature
5. 9/30/2011- Subdivision Plat Recorded

v. **Stormwater Management (“SWM”) Covenant**

1. 10/26/2011- Submitted SWM Covenant to OAG for review
2. 11/15/2011- Submitted original executed SWM Covenant to OAG for their signature
3. 11/22/2011 - OAG executed SWM Covenant
4. 11/30/2011- DDOE executed SWM Covenant
5. 12/1/2011 - SWM Covenant recorded

b. **Initial Grading Plan for Single Family and Townhome Units**

i. **DDOE**

1. 10/27/2011- Submitted plans to DDOE

ii. **DC Water**

1. 10/27/2011- Submitted plans to DC Water

2. 11/18/2011- Review Fees Paid to DC Water

c. **Section 1 Site Plan**

i. **DDOE**

1. 12/1/11 - Submitted plans to DDOE

ii. **DC Water**

1. 12/1/11 - Submitted plans to DC Water

iii. **DDOT**

1. 12/1/11 - Submitted plans to DDOT

d. **Building Permit Applications for Square 3714, Lots 125, 126, 127**

i. 10/5/11 - Submitted building permit application no. B1200158

ii. 10/17/11 - Submitted plans to DDOE

iii. 10/18/11 - Submitted plans for third party review

iv. 11/3/11 - Submitted building permit application no. B1201429

v. 11/3/11 - Submitted building permit application no. B1201430

vi. 11/14/11 - DC Water approval

vii. 11/22/11 - Third party review comments submitted to Architect

8. The Applicant is fully committed to moving forward with the project, has moved forward with the permit applications diligently and in good faith, and has invested approximately \$305,000 in preparing construction drawings and permit application fees in order to move forward with development of the project. A number of these applications are currently under review.

9. The project has not changed in any form, and the extension is requested in order to enable the Applicant to continue moving forward with the processing and issuance of building permits and construction of the project. Moreover, there has not been any change in any of the material facts upon which the Commission based its original approval of the PUD and the Applicant remains committed to moving forward with the project and fully complying with the conditions and obligations imposed as part of the PUD approval.

10. The Commission finds that the real estate market has been subject to, and continues to suffer from, severe financing, construction, sales and other impediments. From October of 2008 to March of 2011, the Applicant did not have control of the site. Once the Applicant gained site control, they diligently moved forward with the development. However, the Applicant was unable to secure all required

governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the Applicant's reasonable control. In light of the Applicant's diligent and good faith efforts to obtain permits to move forward with the development of the project, the Commission finds that this extension request satisfies the criterion for good cause shown as set forth in § 2408.11 of the Zoning Regulations.

11. The only other parties to this application were Advisory Neighborhood Commission ("ANC") 4B and the Citizens Aware Block Organization. The Applicant has served a copy of this request on both parties. ANC 4B did not submit a response. Citizens Aware Block Organization submitted a letter dated December 30, 2011 stating it had no comment on the request. There is no dispute to the fact that the Applicant has filed the required permits to move forward with construction of the approved PUD, but is waiting for DCRA to complete its review of such permit applications.
12. The Office of Planning ("OP") submitted a report dated December 16, 2011 indicating that the Applicant demonstrated evidence of good cause for the extension, and OP therefore recommended that the Commission grant the extension request for a period of one year.
13. Because the Applicant demonstrated good cause with substantial evidence pursuant to § 2408.11(b) and (c) of the Zoning Regulations, the Commission finds that the request for the one-year time extension of the approved PUD should be granted.

### **CONCLUSIONS OF LAW**

1. The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided in § 2408.11. (11 DCMR § 2408.10.) Section 2408.11 provides the following criteria for good cause shown: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition

or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

2. The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.
3. The Commission concludes there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.
4. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the affected ANC's recommendations. ANC 4B did not submit a report.
5. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. OP submitted a report indicating that the Applicant meets the extension standards of the Zoning Regulations, and therefore recommended that the Commission approve the requested extension. The Commission has given OP's recommendation great weight in approving this application.
6. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11(b) and (c). Specifically, from October of 2008 to March of 2011, the Applicant did not have control of the site. Once the Applicant gained site control, they diligently moved forward with the development. However, the Applicant was unable to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the Applicant's reasonable control.
7. Section 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11.
8. The Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.



9. The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

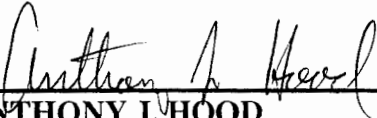
**DECISION**


In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a one-year time extension of the validity of Z.C. Order Nos. 05-30 and 05-30A, such that construction must start no later than January 19, 2013.

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

On January 9, 2012, upon the motion of Vice Chairman Schlater, as seconded by Chairman Hood, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Marcie I. Cohen, Michael G. Turnbull, and Peter G. May, to adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on April 13, 2012.

  
\_\_\_\_\_  
**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
\_\_\_\_\_  
**SARA B. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



Z.C. CASE NO.: 05-30B

As Secretary to the Commission, I hereby certify that on **APR 6 2012** copies of this Z.C. Order No. 05-30B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- |   |   |
|---|---|
| 1. D.C. Register  | 6. Councilmember Muriel Bowser  |
| 2. Norman M. Glasgow, Jr., Esq.<br>Kyrus Freeman, Esq.<br>Holland & Knight, LLP<br>2099 Pennsylvania Ave., N.W.<br>Washington, D.C. 20006 | 7. DDOT (Martin Parker)   |
| 3. ANC 4B<br>6856 Eastern Ave., NW, #314<br>Washington, DC 20012  | 8. Melinda Bolling, Acting General Counsel<br>DCRA<br>1100 4 <sup>th</sup> Street, S.W.<br>Washington, DC 20024                 |
| 4. Commissioner Judi Jones<br>ANC/SMD 4B07<br>25 Sheridan St NW<br>Washington, DC 20011   | 9. Office of the Attorney General (Alan Bergstein)  |
| 5. Gottlieb Simon<br>ANC<br>1350 Pennsylvania Avenue, N.W.<br>Washington, D.C. 20004  | 10. Citizens Aware Block Organization<br>Attn: Yvonne A. Jefferson<br>6009 New Hampshire Avenue, N.E.<br>Washington, D.C. 20011 |

ATTESTED BY:

A handwritten signature in cursive script, appearing to read "Sharon S. Schellin", is written over a horizontal line.

Sharon S. Schellin  
Secretary to the Zoning Commission  
Office of Zoning

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 05-30C  
Z.C. Case No. 05-30C  
Karajoel, LLC  
(PUD Modification @ Square 3719)  
May 13, 2013**

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on February 21, 2013 to consider an application from Karajoel, LLC ("Applicant"), owner of Lot 41 in Square 3719 ("Property" or "Subject Property"), for approval of a modification to a planned unit development ("PUD") approved pursuant to Z.C. Order No. 05-30. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

**FINDINGS OF FACT**

1. On November 13, 2012, the Applicant submitted an application to the Commission for approval of a minor modification to a PUD approved pursuant to Z.C. Case No. 05-30. (Exhibit ["Ex."] 1-1D, 4.)
2. Pursuant to Z.C. Order No. 05-30, the Commission approved a PUD for former Parcels 126/24 and 126/74, and Lots 69, 70, 71, 72, 73, 801, 824, and 826 in Square 3714, and former Lot 858 in Square 3719, of which the Subject Property is a portion. The Subject Property contains 83,140 square feet of land area and two existing buildings.
3. The approved PUD includes construction of a residential development of 169 units – including 38 detached single-family dwellings, 73 townhomes, and 58 condominium apartments – containing approximately 369,684 square feet of gross floor area. Furthermore, the project will include 14 units (three townhomes and 11 condominiums) offered as affordable housing units. The affordable apartment units will be distributed vertically and horizontally throughout the two apartment buildings. The three affordable townhouse units will be units randomly distributed with not more than one per group of townhouses. The project will have an overall density of 0.73 floor area ratio ("FAR") and a maximum building height of approximately 40 feet for the townhouses and single-family homes. The project includes a total of over 186,000 square feet of green space within the development.

4. After the PUD was approved pursuant to Z.C. Order No. 05-30, the original applicant sold off its interest in the apartment component of the project to the Applicant. Now, the Applicant owns the apartment component and the existing two buildings on the original PUD site. The original applicant continues to own the entirety of the detached house and townhouse portion of the PUD. (Ex. 1.)
5. Pursuant to Z.C. Order No. 05-30A, which became final and effective on March 13, 2009, the Commission approved the validity of Z.C. Order No. 05-30 for a period of two additional years, such that a building permit application for the PUD must be filed no later than January 19, 2011 and construction must start no later than January 19, 2012.
6. Pursuant to Z.C. Order No. 05-30B, which became final and effective on April 13, 2012, the Commission approved the validity of Z.C. Order Nos. 05-30 and 05-30A such that construction must start no later than January 19, 2013.
7. The Applicant now seeks a modification to the approved PUD. Specifically, the Applicant requested approval to change the use of the smaller existing building from apartments to an adult day treatment facility and to reduce the total number of condominium apartments to 46, all of which will be in the larger existing building. In addition, the Applicant requests the approval of a small addition to the smaller building to accommodate the adult day treatment facility. Further, the Applicant requests that the existing larger building that will become apartments not be expanded, as previously approved. Finally, the Applicant has requested an extension of the validity of the PUD such that the Applicant may apply for a building permit up to two years from the effective date of this Order. Except for the modifications and the conditions contained herein, the proposed project, in all other respects, will be substantially consistent with the prior approval and the conditions set forth in Z.C. Order Nos. 05-30, 05-30A, and 05-30B. The PUD and Zoning Map amendment approved in Z.C. Order Nos. 05-30, 05-30A, and 05-30B shall otherwise remain the same. (Ex. 1, 13-13D, 25.)
8. On November 20, 2013, the Office of Planning (“OP”) submitted a report recommending that the application be heard at a public hearing rather than as a minor modification. (Ex. 5.)
9. At its December 10, 2012 public meeting, the Commission set the case down for a public hearing as a contested case. (12/10/12 Transcript [“Tr.”] at pp. 79-81.)
10. On December 17, 2012, the Applicant submitted a letter requesting a hearing date. (Ex. 7). On February 1, 2013, the Applicant submitted supplemental information, including a traffic and parking analysis for the proposed modification as well as revised plans for the proposed apartment building. (Ex. 13.)

11. After proper notice, the Commission held a hearing on February 21, 2013 on the application. Advisory Neighborhood Commission (“ANC”) 4B was automatically a party. The Commission received no requests for party status.
12. OP provided a report dated February 8, 2013 and provided testimony at the hearing in support of the application with conditions. The contents of the report are discussed below. (Ex. 15; 2/21/13 Tr. at pp. 103-04.)
13. At the public hearing, the Commission heard testimony and received a report from the District Department of Transportation (“DDOT”) stating that the proposed adult day treatment facility would not have adverse operational or safety impacts on the roadway network or study intersections. (Ex. 14; 2/21/13 Tr. at pp. 104-06.)
14. At the public hearing, the Applicant testified that despite its best efforts to find a partner to develop the both buildings with residential uses, it was unable to interest a residential developer because of the high cost of renovating the buildings for a comparably small number of units. The Applicant further testified that it subsequently sought other partners to develop the site and that charter schools tended to express the most interest. The Applicant testified that, out of respect for the community’s wishes, it declined to partner with charter schools. The Applicant testified that Metro Homes, the proposed adult day treatment facility operator, would be the best partner for the smaller existing building because it would have the fewest impacts on the community and its purchase of the smaller building would then allow redevelopment of the larger existing building into condominium apartments. (2/21/13 Tr. at pp. 19-23.)
15. The Applicant testified about his commitment to involving the community in selecting a development partner. The Applicant testified that in the more than three years that it has sought a development partner, it has extensively engaged members of the community and ANC 4B. The Applicant testified that it met with Councilmember Muriel Bowser no less than four times and attended at least 10 community and ANC meetings. In addition, the Applicant testified that it engaged members of the community about Metro Homes at least nine months prior to the hearing date. (2/21/13 Tr. pp. 20-23.)
16. The Applicant’s architect testified that the modification to the PUD will result in a few changes to both existing buildings that differ from the original PUD. The modification will include 27 surface parking spaces for the smaller building and 46 surface spaces for the larger building. The larger building will not include an underground parking garage. The larger building will not be enlarged and will contain the 11 of the affordable condominium units that have yet to be constructed. (2/21/13 Tr. at pp. 27-30.)
17. The Applicant’s architect further testified that the smaller building will be used entirely by Metro Homes for its offices and adult day treatment program. The cellar and first floors would contain classrooms, activity rooms, a kitchen, and a cafeteria. The second and third floors will contain offices. The smaller building will receive an addition of

approximately 1,095 square feet on the first floor to accommodate the cafeteria. The Applicant will slightly modify the building's exterior, which will include extending the elevator to the third floor, adding dormers, and constructing a deck on part of the roof. (Ex. 1; 2/21/13 Tr. at pp. 34-42.)

18. In writing and at the public hearing, a representative of Metro Homes testified that the adult day treatment facility will accommodate 110 participants and 26 staff. However, the representative of Metro Homes testified that the average daily attendance will be approximately 93 participants. (2/21/13 Tr. at p. 52.)
19. The representative of Metro Homes further testified that Metro Homes will operate a small fleet of vans to transport participants to and from the facility. Metro Homes currently does this at its existing facility. The vans generally will arrive between 8:30 a.m. and 10:30 a.m. Monday through Friday to drop-off participants, with three or more vans unloading at a time. All participants will be escorted into the facility. Vans will pick-up participants from the facility between 2:00 p.m. and 4:30 p.m. (Ex. 13A; 2/21/13 Tr. at pp. 50-52.)
20. The Applicant's traffic expert provided testimony in writing and at the hearing that the proposed modification to include an adult day treatment facility with 110 participants and 27 staff will have only a minimal effect on traffic on the studied streets and intersections. The Applicant's traffic analysis assessed the impact of the arrival of participants by vans as well as all of the staff's arrival by automobile. In addition, the traffic analysis' background conditions included the planned charter school approximately one block from the Property. (Ex. 13A; 2/21/13 Tr. at pp. 55-57.)
21. ANC 4B initially submitted a report and resolution in opposition to the application, and a representative of the ANC testified in opposition at the public hearing. However, following the public hearing, the ANC changed its position and submitted a letter and resolution in support of the application based on a private agreement between the Applicant and community organizations in which the Applicant agreed to conditions regarding the proposed modification. The contents of the final ANC report are discussed more fully below. (Ex. 16, 26.)
22. Judi Jones, a nearby resident and ANC 4B commissioner, submitted a letter in support of the application. She stated that the adult day treatment facility would be an appropriate use and that she supports the application because it would allow redevelopment of the larger existing building. (Ex. 18.)
23. Stan Voudrie, Manager of Four Points LLC, testified in support of the application. Mr. Voudrie testified that Four Points is developing the townhouse and detached single-family dwelling portion of the original PUD. He stated that he has not received any negative feedback from salespeople or house purchasers about the proposed adult day treatment facility. (2/21/13 Tr. at pp. 143-45.)

24. On February 15, 2013, the Lamond-Riggs Citizens Association, the Lamond Community Action Group, and the Lamond-Riggs Development Task Force (the “Community Organizations”) submitted a letter in opposition to the application. The Community Organizations also testified in opposition at the public hearing. The Community Organizations acknowledged the extensive dialogue with the Applicant but opposed the application based on the original vision for the PUD as an all residential community and lingering concerns about Metro Homes’ van traffic. In addition, the Community Organizations expressed concerns about the number of participants in the adult day treatment facility, visitor parking for the adult day treatment facility, construction management, community, amenities and design. Following the public hearing, the Community Organizations entered into a separate agreement with the Applicant to address their concerns. Following the agreement, the Community Organizations changed their position and supported the application. (Ex. 17, 26; 2/21/13 Tr. at pp. 150-159.)
25. On March 22, 2013 the Applicant submitted supplemental information in response to questions and requests during the public hearing. Such information included a more detailed site plan, floor plans showing affordable units, a landscaping plan, and a circulation plan for Metro Homes’ vans. (Ex. 25-25C.)
26. The Commission finds that the Applicant’s separate agreement with the Community Organizations adequately addresses all of the Community Organizations’ concerns.
27. At a public meeting held on April 8, 2013, the Commission took proposed action to approve the application.
28. At a public meeting on May 13, 2013, the Commission took final action to approve the application in Z.C. Case No. 05-30C, subject to conditions.

### **Benefits and Amenities**

29. The Commission found in Z. C. Case No. 05-30 that a number of public benefits and amenities will be created as a result of the approved PUD. (See Z.C. Order No. 05-30.) The Commission finds that approval of the proposed modification will result in a number of public benefits and amenities, including:
  - a. *Housing and Affordable Housing*

The modification will result in the construction of 46 condominium apartments, 11 of which will be affordable for households making at or below 80% of the Area Median Income; (Ex. 1.)
  - b. *Urban Design, Architecture, Landscaping, or Creation of Open Spaces*



The relocation of an existing operation to an improved facility represents an adaptive reuse of an existing structure with minor modification to the building's structure. This is a sustainable element of the proposal while accommodating a much needed service beneficial to the city as a whole; and (Ex. 15.)

c. *Uses of Special Value*

The Applicant agreed to make the following community amenities and public benefits: (Ex. 25C.)

- i. **Use of two large meeting rooms in the Metro Homes facility.** Metro Homes will provide the community with access to the 1,300 square foot training room, and 1,500 square foot cafeteria when the Metro Homes is not operating, subject to a separate agreement;
- ii. **Support community events.** The Applicant will support the expenses associated with two community events annually for 10 years in an amount not to exceed \$1,000 per year. The Applicant and the Community will make separate arrangements for the disbursements of those funds;
- iii. **Incorporate a car sharing location.** The Applicant will provide a permanent space for a car sharing station in or near the overflow parking area at the condo building site. The Applicant will make best efforts to arrange for such a car sharing service to locate at the PUD;
- iv. **Support community association services.** The Applicant will support administrative and constituent services in the amount of \$2,000 each (totaling \$6,000) to the following community organizations: Lamond Riggs Citizens Association, Lamond Community Action Group, and Citizens Aware. The contributions will be distributed prior to the issuance of a Certificate of Occupancy for the condominium. The Applicant and the officers of the listed organizations will make arrangements for the specific distribution of the contributions; and
- v. **Add sidewalks from 76 Peabody to 42 Peabody (across from site) and curbs on opposite side of Sligo Mill Rd. in 6000 block.** The Applicant will pay for or install approximately 300 square feet of sidewalk, in coordination with the D.C. Department of Transportation. This condition is contingent on the Applicant or DDOT developing a feasibility study and implementation plan, and may be revoked if the study results are that the sidewalk plan is not feasible. If given DDOT approval, the installation timing will coincide with the sidewalk installation planned for the PUD site.



### Zoning Flexibility

30. In the original PUD, the Commission granted the following areas of flexibility from the Zoning Regulations:

*Flexibility from §§ 410 and 2516.* Section 410.1 provides that in an R-5 Zone District, if approved by the Board of Zoning Adjustment as a special exception, a group of one-family dwellings, flats, or apartment houses, or a combination of these buildings, with division walls erected from the ground or lowest floor up, may be erected and deemed a single building for the purpose of the Zoning Regulations. (11 DCMR § 410.1.) Section 2516 allows multiple buildings on a single, subdivided record lot, which is useful where—as here—there are large, deep lots having a smaller amount of street frontage.

As shown on the proposed site plan [...] the Applicants proposed to erect the townhomes in groups of buildings. All buildings in each group will be erected simultaneously, and all front entrances of the group will abut either a street, front yard, or front court. However, since the Subject Property has a large land area compared to the amount of street frontage, the Applicants proposed that the Commission treat each grouping of townhomes as a single building for the purpose of the Zoning Regulations so that each individual dwelling need not satisfy all the area and bulk provisions.

*Flexibility from Yard Requirements.* Pursuant to § 405.9, side yards provided in the R-5-A Zone District must have a minimum width of eight feet. A rear yard with a minimum depth of 20 feet is also required. (11 DCMR § 404.1.) For lots having no street frontage, a front yard equal to the minimum required rear yard is also required by § 2516.5(b). The Applicants requested flexibility from these requirements because a number of the yards provided will be less than the required width. As shown on the proposed site plan [...] the Applicants designed the layout of the proposed development to meet as many of the applicable zoning requirements as possible. However, due to design and massing features of the project, and the clustering of units to ensure open space, a number of units will not have complying yards. However, the project will include a significant amount of open space, as the overall lot occupancy is approximately 26.6%, and approximately 36.9% of the Subject Property will be devoted to open, green space.

31. Through this modification application, the Applicant seeks additional relief to permit an adult day treatment facility use. This use is permitted as a special exception under §§ 205 and 3104 of the Zoning Regulations. The Commission is authorized by § 2405.7 of the Zoning Regulations to approve special exception uses through a PUD.
32. No additional zoning flexibility was requested, or is granted through this Order.

33. The Application satisfies the special exception requirements of §§ 205 and 3104 of the Zoning Regulations, as follows:

- a. The center or facility shall be capable of meeting all applicable code and licensing requirements; (§ 205.2.)

The proposed facility is the relocation of an existing facility operating at a different location since 2001. The operator understands that the renovated building will be inspected for code and licensing compliance prior to its operation at this location.

- b. The center or facility shall be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off persons in attendance; (§ 205.3.)

Drop-off and pick-up would be solely with the PUD site on private streets. Clients would be brought to the site by van, with approximately 22 van arrivals between the hours of 8:45 a.m. and 12 noon, with a similar departure between 2:00 p.m. and 3:30 p.m. Food delivery to the site would occur once per day prior to noon. The Applicant agreed to a condition that no van queuing shall occur on adjacent public streets.

DDOT concluded in its report that the proposed adult day treatment facility would not have adverse operational or safety impacts on the roadway network or study intersections.

- c. The center or facility shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors; (§ 205.4.)

The facility has a maximum of 26 staff persons, some of whom may drive to the site. The facility satisfies its on-site parking requirement of one-space per employee using the areas identified as alleys on the Applicant's site plan. Up to five overflow parking spaces are available at the residential building to the east of the facility.

- d. The center or facility, including any outdoor play space provided, shall be located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise, activity, visual, or other objectionable conditions; (§ 205.5.)

The facility clients will not participate in outdoor activities. There are no other objectionable impacts.

- e. The Board may require special treatment in the way of design, screening of buildings, planting and parking areas, signs, or other requirements as it deems necessary to protect adjacent and nearby properties; (§ 205.6.)

No residential homes front on the parking areas along the alley of the facility. OP recommended that no special screening features were necessary.

- f. Any off-site play area shall be located so as not to result in endangerment to the individuals in attendance at center or facility in traveling between the play area and the center or facility itself; (§ 205.7.)

Off-site play is not a feature of the facilities programming.

- g. The Board may approve more than one (1) child/elderly development center or adult day treatment facility in a square or within one thousand feet (1,000 ft.) of another child/elderly development center or adult day treatment facility only when the Board finds that the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors; (§ 205.8.)

There are no other like facilities within a 1,000 foot radius.

- h. Before taking final action on an application for use as a child/elderly development center or adult day treatment facility, the Board shall submit the application to the D.C. Departments of Transportation and Human Services, the D.C. Office on Aging, and the D.C. Office of Planning for review and written reports; (§ 205.9.)

The Office of Planning noted in its report that it had referred the application to the appropriate government agencies for comment.

- i. The referral to the D.C. Department of Human Services shall request advice as to whether the proposed center or facility can meet all licensing requirements set forth in the applicable laws of the District of Columbia; and (§ 205.10.)

The D.C. Department of Human Services did not provide comments.

- j. The special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. (§ 3104.1.)

The proposed facility satisfies the purpose and intent of the Zoning Regulations and Map. It is well separated from the single-family residential uses of the approved PUD by an alley, so as not to adversely impact the use of the neighboring properties. No outdoor activity is programmed by the proposed use and the facility would not be in operation on weekends or during the evening hours when residents would most likely return from work. The community will have access to the kitchen facility and community room for meetings.

### **Final Office of Planning Report**

34. OP submitted a final report on the modification application dated February 8, 2013. The report evaluated whether the newly proposed adult day treatment facility satisfied the established special exception criteria set forth in §§ 205 and 3104 of the Zoning Regulations, recommended that the new use met the special exception criteria, and recommended the following conditions limiting this use:

- The adult day treatment facility shall be limited to a maximum of 110 clients and 26 staff;
- The number of clients at any one time shall not exceed 110;
- The hours of operation shall be from 8:30 a.m. to 4:00 p.m.;
- Drop-off shall be between the hours of 8:45 a.m. and 12 noon and pick-up shall be completed no later than 3:30 p.m. All drop-off and pick-up shall be on-site. No van queuing shall occur on adjacent public streets;
- The facility's cafeteria shall be made available to community use when no clients are present;
- The approved 11 affordable units shall be located in the larger residential building consistent with Condition 4 of the approved PUD Order (Z.C. Order No. 05-30); and
- A reduction in the number of apartment units of the approved PUD from 58 to 46 units, all to be located in the larger of the existing buildings, with provision of 11 affordable units as approved under Z.C. Order 05-30.

The OP report concluded the application was consistent with elements of the Comprehensive Plan and satisfied the PUD evaluation standards. (Ex 15.).

### **Final ANC 4B Report**

35. By letter dated March 26, 2013, ANC 4B submitted its final report on the Application. The letter attached a resolution approved by the ANC at a properly noticed meeting at

which a quorum was present. The attached resolution stated that the ANC supported the Application, subject to the condition that the Applicant would not include a public charter school facility in the project, and that a particular charter school had identified the PUD site as a potential location. The resolution also attached a signed memorandum of agreement between the ANC, other community groups, the Applicant, and the operator of the adult treatment facility. The signed memorandum stated that the ANC would proffer its support of the Application contingent on the inclusion of fifteen conditions in this Order. (Ex 26.)

### **CONCLUSIONS OF LAW**

Pursuant to the Zoning Regulations, the PUD process provides a means for creating a “well-planned development.” The objectives of the PUD process are to promote “sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces-and other amenities.” (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” (11 DCMR § 2400.2.)

Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, and yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. (11 DCMR § 2405.)

The development of the PUD project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development.

As was the case for the original PUD approval, the Commission, as part of its approval of a modification may grant or impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, or any other applicable zoning requirement.

Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

The modified PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

The modified PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The uses for this project are appropriate for the Subject Property. The impact of the project on the surrounding area and the operation of city services are acceptable given the quality of the public benefits in the project.

Approval of this modification to an approved PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

The benefits and amenities of the PUD, as modified, are an adequate tradeoff for the requested zoning flexibility.

The Commission is required under Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to issues and concerns raised in the affected ANC's written recommendation. Great weight requires the acknowledgement of the ANC as the source of the recommendations and explicit reference to each of the ANC's concerns. The written rationale for the decision must articulate with precision why the ANC does or does not offer persuasive evidence under the circumstances. In doing so, the Commission must articulate specific findings and conclusions with respect to each issue and concern raised by the ANC. (D.C. Official Code § 1-309.10(d)(3)(A) and (B).)

The Commission has carefully considered the ANC's recommendation that it include a condition in this Order prohibiting a charter school within the PUD. The Commission notes that a charter school is not an approved use within the approved PUD, or this modification of the PUD. The Zoning Regulations provide that in order to obtain a building permit, the Applicant must record a covenant on the land records restricting use of the Property in accordance with the PUD Orders. (11 DCMR § 2409.3.) Accordingly, a charter school cannot locate within the PUD site unless this PUD Order is modified by the Commission. If an application to modify the PUD is filed in the future, the Commission will judge the application on its own merit, and therefore declines to include a condition prohibiting a charter school use. The ANC will have an opportunity to participate in any modification proceeding, if one is filed. The Commission believes this process adequately addresses the ANC's concern about this issue.

The ANC also stated in its resolution that fully supported and is a party to all the terms and conditions of the signed "Memorandum and Agreement of Approved Conditions" that was attached to the ANC resolution. The Applicant submitted a draft order that included all of the conditions listed in the agreement. The Commission has included the substance of all of the conditions in this Order, but has revised the form of the conditions so they can be enforced by the Zoning Administrator.



The Commission is required under Section 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. The Commission carefully considered OP's recommendation for approval, and concurs in this recommendation.

OP also recommended several conditions in its report. The Commission has included the substance of these recommendations in this order, with two exceptions. First, the OP report suggested restricting the hours of operation of the adult day treatment facility so that they would end at 4 p.m., and in another condition recommended that all transportation pick up from the facility end by 3:30 p.m. The Applicant stated that the facility will operate until 4:30 p.m. and that pickup will also end at 4:30 p.m. The Commission concludes that the Applicant's proposed hours are reasonable, and therefore adopted conditions consistent with this proposal, requiring operating hours to end at 4:30 p.m. Second, the OP report recommended a condition requiring all drop-off and pick up to occur on site, and that no van queuing will occur on public streets. The Applicant negotiated an agreement with interested Community Organizations that includes a requirement that, "the Applicant shall evaluate the adult day treatment facility's vehicular traffic and provide any signage deemed necessary to ensure that shuttle van services does not encroach on residential areas (to include but not limited to parking/standing in non-designated areas and idling for extended periods)." The Commission has included that requirement as a condition of this Order. The Commission believes this condition is an adequate substitute for the condition OP recommended.

### DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of this application for modification of a PUD approved pursuant to Z.C. Order No. 05-30. This approval is subject to the guidelines, conditions and standards as set forth in the Decision of Z.C. Order No. 05-30, as modified by the following guidelines, conditions, and standards.

Conditions 1 and 2 of Z.C. Order 05-30 are modified to read as follows:

1. The PUD shall be developed substantially in accordance with the plans prepared by Franck Lohsen McCrery Architects, dated March 30, 2006, marked as Exhibit 26 in the record (the "Plans"); as modified by Exhibit 83 and Exhibit 88; **as further modified by the architectural plans and elevations in Exhibits 25A1 and 25A2 in Z.C. Case 05-30C**; and as further modified by the guidelines, conditions and standards herein.
2. The PUD shall be a residential development, **and an adult day treatment facility**, as shown on the approved plans. The PUD shall have a maximum FAR of 0.73 and a combined gross floor area of no more than 369,684 square feet. The project shall contain no more than 169 dwelling units, including 38 single-family dwellings, 73 townhomes, and **46** condominium apartments. The Applicants shall be permitted to adjust the layout,

configuration and number of apartment units, provided the total number of units (169) is not exceeded.

The following additional conditions shall apply. For the purposes of these conditions, the term "Applicant" means the person or entity then holding title to the Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner.

1. Prior to the issuance of a certificate of occupancy ("CO") for the condominium apartment building, and for the life of the PUD, the Applicant shall provide at least five overflow parking spaces for the adult day treatment facility at the site of the condo building.
2. For the life of the PUD, the Applicant shall maintain common areas of two buildings as well as upkeep along public streets and sidewalks surrounding the buildings.
3. For the life of the PUD, the Applicant shall provide the community with access to the 1,300 square foot training room, and 1,500 square foot cafeteria when the adult day treatment facility is not operating, subject to a separate agreement.
4. Karajoel, LLC shall support the expenses associated with two community events annually for 10 years in an amount not to exceed \$1,000 per year. Karajoel, LLC and the Community Organizations will make separate arrangements for the disbursements of those funds.
5. Prior to the issuance of a CO for the condominium apartment building, the Applicant shall make best efforts to arrange for a car sharing services to locate a car sharing station in or near the overflow parking area at the condo building site. If a car sharing service is willing to locate a station, the Applicant shall reserve a parking space in or near the overflow parking area at the condo building site for the car sharing station.
6. Prior to the issuance of a CO for the condominium apartment building, the Applicant shall evaluate the adult day treatment facility's vehicular traffic and provide any signage deemed necessary to ensure that shuttle van services does not encroach on residential areas (to include but not limited to parking/standing in non-designated areas and idling for extended periods).
7. Within six months of opening the adult day treatment facility, with advance notice and arrangements, the Applicant shall arrange site visits to existing Metro Homes facilities and site visits to the new facility for interested members of the community.



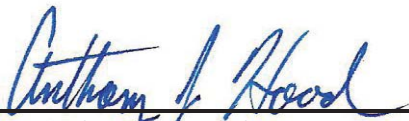
8. The Applicant shall provide construction updates, at least monthly, via email and/or phone, to the community. The Applicant also will provide updates on the Trout Design website.
9. Prior to the issuance of a CO for the condominium apartment building, the Applicant shall develop lighting and security plans and seek community input.
10. The Applicant will extend the cornice line to the addition at the rear of the second (small) building, as reflected in the revised plans submitted by the Applicant in Exhibit 25A.
11. Prior to the issuance of a CO for the condominium apartment building the Applicant will support administrative and constituent services in the amount of \$2,000 each (totaling \$6,000) to the following community organizations: Lamond Riggs Citizens Association, Lamond Community Action Group, and Citizens Aware. The Applicant and the officers of the listed organizations will make arrangements for the specific distribution of the contributions.
12. Prior to the issuance of a CO for the condominium apartment building, the Applicant will pay for or install approximately 300 square feet of sidewalk, in coordination with the D.C. Department of Transportation. This condition is contingent on the Applicant or DDOT developing a feasibility study and implementation plan, and may be revoked if the study results are that the sidewalk plan is not feasible. If given DDOT approval, the installation timing will coincide with the sidewalk installation planned for the PUD site.
13. The adult day treatment facility shall be limited to a maximum of 110 clients and 26 staff.
14. The hours of operation for the adult day treatment facility shall be 8:30 a.m. to 4:30 p.m.
15. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time, an application for a building permit must be filed as specified in 11 DCMR § 2409.1; the filing of the building permit application will vest this Order.
16. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.1 *et seq.* (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violations will be subject to disciplinary action. The failure or refusal of the Applicant to comply with the

Act shall furnish grounds for the denial or, if issued, the revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On April 8, 2013, upon the motion of Chairman Hood, as seconded by Vice Chairman Cohen, the Zoning Commission **APPROVED** this application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On May 13, 2013, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on May 31, 2013.

  
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ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION

  
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SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING