GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Order No. 19704-A in Application No. 19704 of Milestone East Capitol 4, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the new residential development provisions of Subtitle U § 421, and pursuant to Subtitle X, Chapter 10, for variances from the floor area ratio requirements of Subtitle F § 302, the lot occupancy requirements of Subtitle F § 304, and the rear yard requirements of Subtitle F § 305, to construct a new 89-unit apartment house and retain seven existing apartment houses in the RA-1 Zone at premises 127 35th Street, S.E. (Square 5413, Lot 802).[1]

HEARING DATE: March 7, 2018
DECISION DATE: March 7, 2018

CORRECTED SUMMARY ORDER [2]

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 6 (original); Exhibit 30 (revised).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 7F and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7F, which is automatically a party to this application. ANC 7F did

[1] The Applicant indicated that it intends to file a planned unit development ("PUD") application for the larger Meadow Green Courts site later in the year, but sought relief for this aspect of the project in this case before the BZA based on deadlines of the annual funding cycle for Low Income Housing Tax Credits ("LIHTC"). The Board previously approved part of this project in Case No. 18972-A (60-unit affordable apartment building for seniors).

[2] This Corrected Summary Order was issued to correctly reflect the reduced number of units proposed as 89 units (down from 90 units as originally proposed), to cite the plans commensurate with the 89-unit building, and to correctly reflect the Zoning Commission member voting on the case as Mr. Shapiro, not Mr. Hood. The changes have been underscored within the order.

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not submit a written report related to the application. However, the Chairman of ANC 7F filed a letter dated March 5, 2018 requesting to have the case record remain open 14 days to allow the submission of a written ANC report after the ANC meets on March 20, 2018. (Exhibit 39.)

The Commissioner for ANC Single Member District ("SMD") 7F06 testified at the hearing in support of the application and noted that the ANC voted unanimously in support of the application at a special meeting on February 26, 2018. With regard to the request in the March 5th letter, the SMD Commissioner testified that a written report from ANC 7F would not contain additional substantive information other than what was expressed in her testimony. By consensus, the Board denied the ANC Chair's motion to keep the record open 14 days for the ANC report, based on the testimony of the SMD Commissioner at the hearing that the report would not contain any new issues or concerns.

The Office of Planning ("OP") submitted a timely report recommending approval of the application with one condition requiring demolition of two of the buildings prior to the issuance of a certificate of occupancy. (Exhibit 33.) The Applicant agreed to OP's proposed condition.

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 32.)

Letters of support were submitted by the Meadow Green Courts Resident Association (Exhibit 28) and Councilmember Vincent Gray (Exhibit 38). At the hearing, the vice president of the Meadow Green Courts Resident Association and one resident testified in support of the application. One neighbor who resides at 3427 B Street, S.E. expressed concerns about the lack of information provided about the proposal to the community at-large. In response to her concerns, the Board encouraged the Applicant to communicate with the witness and other neighbors to answer questions and provide more clarification about the Applicant's plans.

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for area variances from the floor area ratio requirements of Subtitle F § 302, the lot occupancy requirements of Subtitle F § 304, and the rear yard requirements of Subtitle F § 305, to construct a new 89-unit apartment house and retain seven existing apartment houses in the RA-1 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board, and having given great weight to the OP report filed in this case, the Board concludes that in seeking variances from 11 DCMR Subtitle F §§ 302, 304, and 305, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can

be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the new residential development provisions of Subtitle U § 421. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle U § 421, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 41A1 AND 41A2 - FINAL PLANS AND DRAWINGS AND PPT - AND WITH THE FOLLOWING CONDITION:**

1. Prior to the issuance of the Certificate of Occupancy for the new apartment building, the Applicant shall demolish two buildings within the new lot area.

VOTE: **5-0-0** (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Peter A. Shapiro to APPROVE.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: March 13, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITION IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITION IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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 WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.