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 1st 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 30th Plans"). The March 30th 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 30th 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 30th 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.

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

Plat 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.)

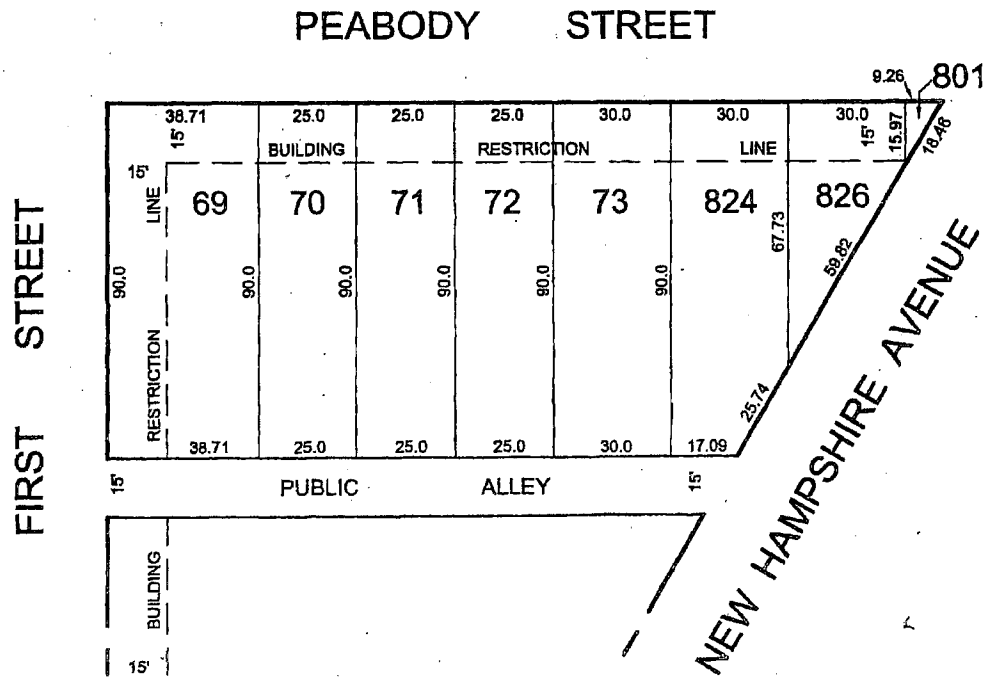
Surveyor, D.C.

By: L.M.A.

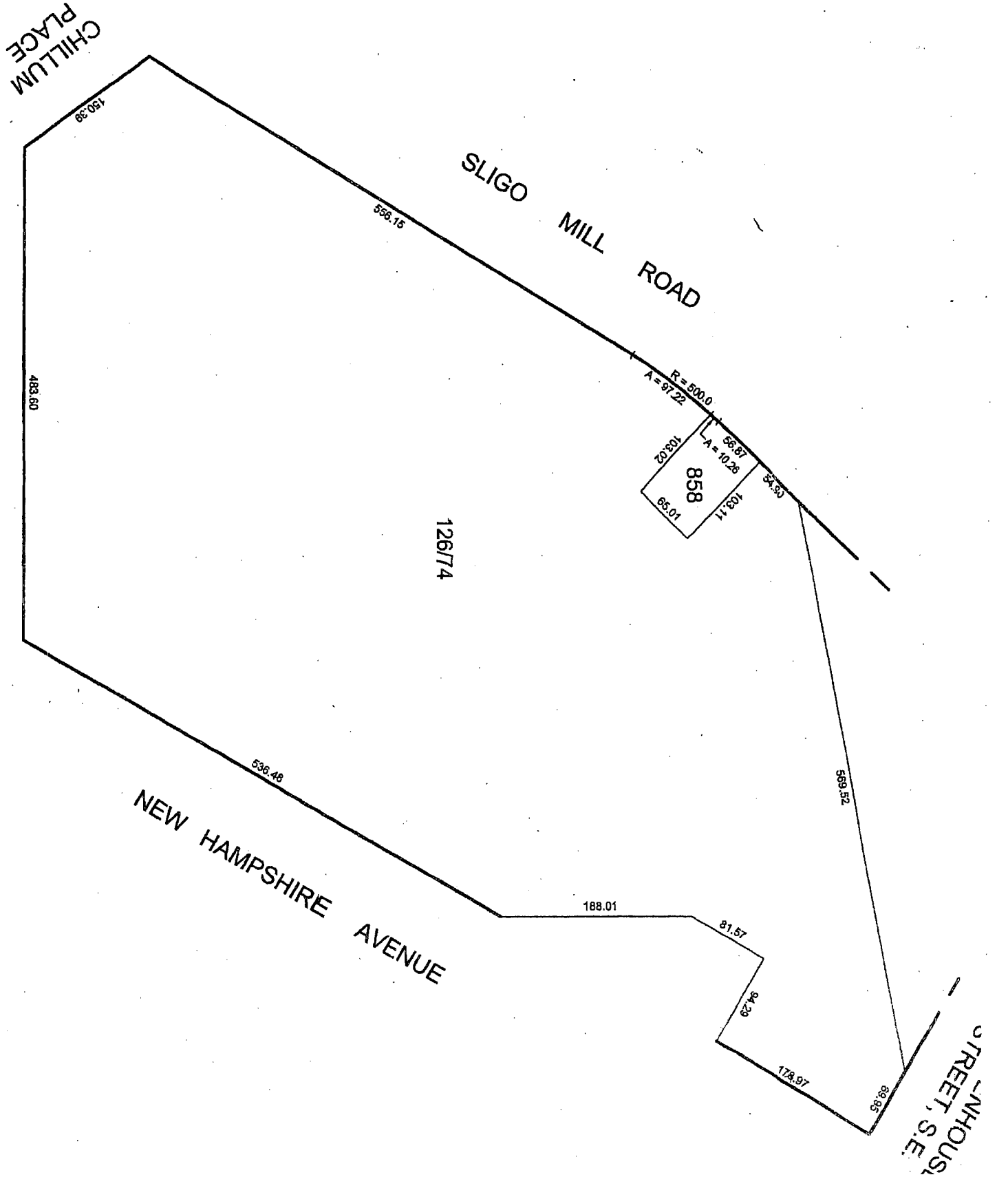
Date: _____

_____
(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. 05-30
EXHIBIT No. 3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65.01
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84.90
126/74
536.48
NEW HAMPSHIRE AVENUE
188.01
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178.97
89.95
569.52
STREET, S.E.

Government of the District of Columbia
OFFICE OF ZONING

Z.C. CASE NO.: 05-30

As Secretary to the Commission, I herby 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.
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   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
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning