

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-19
Z.C. Case No. 11-19
30th Street Crescent, LLC
(Map Amendment @ Square 4376)
April 30, 2012

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on February 23, 2012, to consider an application from 30th Street Crescent, LLC (the "Applicant"), the owner of Lots 25, 26, 27, 28, 802, 803, 804, 805, 806, and the closed paper street in Square 4376 (the "subject property"), for approval of: (a) a map amendment to rezone the subject property from the R-1-B Zone District to the R-5-A Zone District; (b) review pursuant to § 353 of the Zoning Regulations to approve a special exception to permit a new residential development in the R-5-A Zone District; (c) review pursuant to § 2516 of the Zoning Regulations to approve a special exception to permit two or more principal buildings to be erected on a single subdivided lot; and (d) review pursuant to § 3103 of the Zoning Regulations to approve variances from § 401 (number of stories), § 402 (floor area ratio), § 403 (lot occupancy), § 404 (rear yard), § 405 (side yard), and § 2516 (front yard and vehicular ingress/egress width). The Commission considered the applications 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

The Application, Parties, and Hearing

1. On August 12, 2011, the Applicant submitted an application and supporting materials to the Commission requesting a map amendment to rezone the subject property from the R-1-B Zone District to the R-5-A Zone District. The Applicant also requested that the Commission retain jurisdiction to review special exception requests under § 353 and § 2516 of the Zoning Regulations to develop a new residential development in the R-5-A Zone District, and variance relief from §§ 402-405 and 2516 of the Zoning Regulations. (Exhibits "Ex." 1-4.)
2. The subject property consists of Lots 25-28, 802-806, and the closed paper street in Square 4376. A 15-foot public alley abuts the northern and eastern portion of the subject

property. The subject property has a combined land area of approximately 63,489 square feet and is currently unimproved.

3. The subject property is located in the R-1-B Zone District. Pursuant to the "Comprehensive Plan Amendment Act of 2010" (D.C. Law 18-361, 58 DCR 908), the Council of the District of Columbia revised the Future Land Use Map to change the designation of the subject property from "low density residential" to "moderate density residential".
4. At the public meeting on September 12, 2011, the Commission determined that before setting the application down for a public hearing, the Applicant needed to submit additional information, including a revised site plan incorporating more green space, and information demonstrating how the proposed development relates to the existing community.
5. On October 28, 2011, the Applicant submitted revised application materials including revised plans that reduced the number of units from 27 residential units to 24 residential units. (Ex. 13 and 14.) In addition, the Applicant reduced the amount of paving and surface spaces included in the project, and as a result, the number of parking spaces was reduced to 29 spaces. The revised application materials also included a Transportation Evaluation memorandum prepared by Wells and Associates, Inc. ("Wells") indicating that the proposed residential development would add minimal traffic to the existing neighborhood streets. The revised materials also included information regarding the proposed site plan and amount of open space; elevations of the proposed buildings and retaining walls; landscape plans for the open areas and individual lots; perspectives and sections indicating the relationship of the proposed development to the surrounding neighborhood; a detailed grading plan; and a tabulation of the project's development data and an analysis of the requested zoning relief.
6. At its public meeting of November 28, 2011, the Commission voted to schedule a public hearing for the map amendment application. The Commission also voted to retain jurisdiction to decide the special exception and variance relief.
7. On December 8, 2011, the Applicant submitted a Prehearing Statement. (Ex. 18 and 19.) The Prehearing Statement included revised plan sheets addressing the Commission's comments made at the set down meeting and the materials required pursuant to § 3013 of the Zoning Regulations.
8. On January 24, 2012, and pursuant to § 3013.8 of the Zoning Regulations, which provides that an application can be modified up to 20 days prior to the public hearing on the application, the Applicant submitted a letter amending its application to include variance relief from the maximum number of stories requirement of § 400.1 of the Zoning Regulations. (Ex. 25.) The Applicant indicated that revising the proposed plans

in response to comments raised at the set down meeting resulted in a number of the proposed residential units having four stories for zoning purposes. However, the Applicant indicated that all of the proposed residential units comply with the maximum height limitation of 40 feet.

9. On February 3, 2012, the Applicant submitted supplemental pre-hearing materials. (Ex. 26-28.) The supplemental pre-hearing materials included further revised Architectural Plans and Elevations, including a revised site plan that shifted the location of a number of units, revised the architectural vocabulary of the proposed residential units, and added front-loaded garages. The revised site plan included a total of 26 residential units, and a total of 30 parking spaces, which included nine on-street spaces, 13 garage spaces, and eight surface spaces. The supplemental pre-hearing materials also included an updated Transportation Evaluation memorandum and a Parking Occupancy Evaluation memorandum prepared by Wells indicating that the proposed development will not have any adverse impacts on the immediate neighborhood in terms of traffic or parking demand. The supplemental pre-hearing materials also included a detailed analysis indicating how the Applicant meets the applicable standards set forth in the Zoning Regulations for the special exception and variance relief requested in this application.
10. On February 16, 2012, Advisory Neighborhood Commission ("ANC") Jacqueline Manning, Chair of ANC 5B and the Single Member District Commissioner for the subject property, submitted a letter in her individual capacity requesting that the public hearing be delayed so that the Applicant could continue to meet with multiple community groups. (Ex. 32.) However, this letter did not meet any of the legal requirements set forth in the ANC Act as reflected in § 3012.5 of the Zoning Regulations to be granted great weight consideration by the Commission.
11. The Gateway Civic Association and a number of individuals submitted letters and testified at the public hearing in opposition to the application. (Ex. 33-37, 39, 46-52, 55-62, 64-69, and 71).
12. As discussed in more detail in the Contested Issues section below, the Commission finds that the Applicant has adequately addressed the issues raised by the Gateway Civic Association and the individuals that submitted letters and testified in opposition to the application.
13. After proper notice, the Commission held a public hearing on the application on February 23, 2012.
14. The parties to the case were the Applicant and ANC 5B.
15. Six principal witnesses testified on behalf of the Applicant at the public hearing, including Pamela Bundy-Foster and Doryan Winkelman, on behalf of the Applicant;

Sean Pichon, on behalf of PGN Architects, PLLC, as an expert in architecture; Jami Milanovich, on behalf of Wells, as an expert in transportation planning and analysis; Kyle Oliver, on behalf of VIKA Capitol, LLC, as an expert in civil engineering and design; and Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP, as an expert in land use and zoning. Based upon their professional experience, as evidenced by the resumes submitted for the record, Mr. Pichon, Ms. Milanovich, Mr. Oliver, and Mr. Sher were qualified by the Commission as experts in their respective fields.

16. The Office of Planning ("OP") and the District Department of Transportation ("DDOT") testified in support of the application at the public hearing.
17. On March 8, 2012, the Applicant submitted a post-hearing submission. (Ex. 77.) The post-hearing submission included a revised site plan, updated floor area ratio ("FAR") and lot occupancy computations, a revised street alignment, school enrollment and capacity information, an inventory of existing trees on the portion of the subject property to be developed, the project's development budget, and an analysis of the distinction between this application and Z.C. Case No. 00-03C, Z.C. Order No. 921. With respect to the revised site plan, the Applicant updated the site plan and design of a number of units to address the comments raised by the Commission at the hearing. Specifically, all of the residential units have been widened to 18 feet. In addition, the Applicant introduced a new, semi-detached unit type for Lot 15 through Lot 22. These residential units, which are the closest to the existing homes that front of 30th Street, have been reduced approximately nine feet in height per unit. In addition, the Applicant relocated the proposed flats to Lot 11 through Lot 14, which are at the southern developable area of the subject property and overlook adjacent industrial property. The townhouses to be constructed on Lot 1 through Lot 10 along the property's western edge remain largely unchanged except that the number of residential units in this row have been reduced from 11 to 10 in order to accommodate the widened footprints. The revised project includes a total of 28 parking spaces, which includes 10 on-street spaces, 11 garage spaces, and seven surface spaces. In addition, the units with garages include a total of 10 parking pads that can be utilized for additional parking, and the plan includes three parking spaces to be located in public space adjacent to the widened 20-foot alley.
18. On March 8, 2012, ANC Commissioner Manning submitted a letter indicated that the Applicant presented updated project plans at an ANC meeting on March 1, 2012. (Ex. 74.) The letter notes that some residents continue to be concerned about the density of the project and possible construction issues, but that the Applicant responded to the Commission's comments by decreasing the height of a number of units, breaking up the long row, and redesigning some of the units to look more like single family houses/duplexes along the curved part of the project. ANC 5B did not take an official vote on the application at the March 1, 2012 meeting.

19. On March 14, 2012, ANC 5B submitted a letter indicating that although the ANC supports new development in the Gateway community, the ANC voted 6-0 to support the Gateway Civic Association's opposition to the application. (Ex. 78.)
20. At its public meeting held on March 26, 2012, the Commission took proposed action to approve the applications and the plans that were submitted to the record.
21. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. (Ex. 81.) NCPC, by action dated April 10, 2012, found that the proposed project would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital. (Ex. 83.)
22. The Commission took final action to approve the application on April 30, 2012.

Map Amendment Application

23. The subject property has a combined land area of approximately 63,489 square feet and is currently unimproved. Pursuant to the "Comprehensive Plan Amendment Act of 2010," (D.C. Law 18-361, 58 DCR 908), the Council of the District of Columbia revised the Future Land Use Map to change the designation of the subject property from "low density residential" to "moderate density residential". The subject property is designated within a Neighborhood Conservation Area on the Generalized Policy Map, and is also located within the Upper Northeast Area Element of the Comprehensive Plan.
24. The moderate-density residential land use category is used to define the District's row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single family homes, two-to-four unit buildings, row houses, and low-rise apartment buildings. In some of the older inner city neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all). The R-3, R-4, R-5-A Zone Districts are generally consistent with the Moderate-Density Residential category; the R-5-B Zone District and other zones may also apply in some locations."
25. The area in the general vicinity of the subject property is characterized by low-density detached dwellings to the north and east, warehouse and industrial uses to the west along Bladensburg Road and the south along V Street, and parking lots and warehouse buildings to the east along the south side of Adams Street.
26. The area to the immediate east and north of the subject property is developed with detached single family dwellings fronting on Adams Street, the area to the immediate west of the subject property is a wooded area, and warehouses fronting on V Street are

located to the immediate south of the subject property. The area in the vicinity of the property is characterized primarily by the R-1-B, C-M-1, and M Zone Districts.

27. The Office of Planning ("OP") reviewed the Applicant's proposal to rezone the subject property to the R-5-A Zone District and, in its reports dated September 2, 2011 (Ex. 12), November 18, 2011 (Ex. 15.), and February 13, 2012 (Ex. 30), OP indicated that the proposed map amendment is not inconsistent with the goals, objectives, and policies of the Comprehensive Plan. OP indicated that the subject property is designated for "moderate density residential" uses, and that the existing R-1-B Zone District does not allow for the moderate-density level of development of the subject property that is envisioned by the Comprehensive Plan. OP also indicated that the subject property is an infill site and that the proposed R-5-A Zone District provides for residential development that is of moderate scale and is not inconsistent with the Generalized Policy Map's designation of the subject property within a Neighborhood Conservation Area. OP included a detailed analysis of the elements of the Comprehensive Plan, and concluded that the proposed map amendment and the proposed development fulfills many of the Comprehensive Plan's objectives and policies listed in the Land Use Element, Housing Element, Environment Element, and the Upper Northeast Area Element. OP, therefore, recommends approval of the requested map amendment.
28. The Applicant submitted evidence and testimony demonstrating that the requested rezoning complies with all applicable legal standards. (Ex.1 and 45.)
29. Based upon the testimony and evidence presented, as well as the OP reports, the Commission finds that the proposed rezoning is consistent with numerous elements of the Comprehensive Plan Amendment Act of 2006 (D.C. Law 16-300, 54 DCR 006571), as amended by the Comprehensive Plan Amendment Act of 2010 (D.C. Law 18-361, 58 DCR 004091), including, among others, policies to manage growth and change, creating successful neighborhoods, building green and healthy communities, ensuring the efficient use of land resources (Land Use Element), creation of a safe and sustainable transportation network that meets the access and mobility needs of residents (Transportation Element), developing and maintaining a safe, decent, and affordable supply of housing for all current and future residents of the District (Housing Element), the Environmental Protection element, designing for successful neighborhoods (Urban Design Element), and specific Upper Northeast area goals for guiding growth and encouraging infill residential development. The Commission also finds that the proposed map amendment would create favorable conditions for the District and satisfies each of the statutory standards applicable to map amendments.
30. The Commission further finds that the map amendment will: (i) further the health, safety and general welfare by allowing the development of a new residential project on a transitional site between residences to the north and east and warehouse and industrial uses to the west and south; (ii) cause no adverse consequences since the development of

the subject property will be subject to the plans approved by this Order, will comply with all applicable construction and permitting requirements, and will not create any adverse traffic conditions or congestion; and (iii) create favorable conditions and further the economy of public services since the proposed zoning is specifically identified in the Framework Element of the Comprehensive Plan as being consistent with the moderate density residential land use category.

Special Exception Relief

31. The Applicant is also seeking review pursuant to § 353 of the Zoning Regulations to approve a special exception to permit a new residential development in the R-5-A Zone District, and review pursuant to § 2516 of the Zoning Regulations to approve a special exception to permit two or more principal buildings to be erected on a single subdivided lot.
32. Pursuant to § 353.1 of the Zoning Regulations, all new residential developments in the R-5-A Zone District, except those comprised of all one-family detached and semi-detached dwellings, must be reviewed by the Board of Zoning Adjustment, or in this case by the Commission, as a special exception under § 3104 in accordance with the standards of § 353.2 through § 353.4 of the Zoning Regulations.
33. Similarly, § 2516 of the Zoning Regulations provides that two or more principal buildings or structures may be located on a single record lot within a residential zoning district, provided that the proposed development complies with the specific requirements set forth in § 2516.2 through § 2516.11.
34. Pursuant to § 353.2 through § 353.4, the application was referred to the D.C. Public Schools (“DCPS”); Departments of Transportation (“DDOT”) and Housing and Community Development (“DHCD”); and OP. Neither DCPS nor DHCD filed reports with the Commission.
35. On March 8, 2012, DDOT submitted a memorandum, indicating that DDOT supports the Applicant’s revised street layout plan. DDOT indicated that the proposed street realignment, proposed stop signs, and addition of a striped median will allow for the safer flow of traffic. DDOT also indicated that the two new crosswalks will contribute to a safer pedestrian environment and help connect the development to the greater neighborhood pedestrian network. DDOT concluded that the Applicant's proposed street layout and markings will mitigate any safety concerns. (Ex. 75.)
36. The Commission finds that the Applicant meets the applicable requirements of § 353 and § 2516 as follows:

- (a) The subject property is located within the R-1-B Zone District, and the Applicant proposes to rezone the site to the R-5-A Zone District; (§ 2516.2.)
- (b) The Applicant submitted typical floor plans and elevations, landscaping and grading plans, and a site plan that illustrates all new rights-of-way and easements within the proposed development; (§ 353.5 and § 2516.3.)
- (c) The subject property will be divided into 23 theoretical lots, and the front of each principal residential building lot will be the side upon which the primary entrance is located; (§ 2516.5(a).)
- (d) Open spaces are provided in front of the entrance of the majority of the proposed lots. However, the Applicant is requesting variance relief from the open-space requirement since the proposed front yards are not the equivalent of the required depth of rear yard; (§ 2516.5(b).)
- (e) Each of the proposed dwellings will include a rear yard although many of those yards will not meet the minimum sizes required within the R-5-A Zone District; (§ 2516.5(d).)
- (f) The land devoted to the private roadway and alley are not included in calculating the area of the theoretical building sites within the proposed development; (§ 2516.6(a).)
- (g) The private roadway will be at least 25 feet in width at all points. However, the Applicant is requesting variance relief from the requirement of § 2516.6(b) since the existing public alley located behind units 15 through 22 is not 25 feet wide. Although the private alley will not meet this minimum-width requirement, the Applicant is resurfacing and widening the alley from 15 feet to 20 feet in order to provide adequate vehicular ingress and egress. Moreover, the Applicant submitted turning movement diagrams indicating that there is sufficient space for fire trucks and trash service. Therefore, the Commission is using its authority pursuant to § 2516.6(d) of the Zoning Regulations to approve the site plan; (§ 2516.6(b).)
- (h) The height of each principal building within the development has been measured from the finished grade at the middle of the front of the building to the ceiling of the building's top story. Each building within the new development complies with the maximum 40-foot height limitation of § 400; (§ 2516.7.)
- (i) With the exception of the specific areas of relief requested by the Applicant, the proposed development will comply with all substantive provisions of the Zoning Regulations. In addition, the proposed development will have no adverse effects

on the present character or future development of the surrounding neighborhood. The Applicant has designed an attractive residential development that respects the character of the surrounding area. Perspectives and sections showing the relationship between the proposed development to the surrounding neighborhood demonstrate that the proposed new residential units have been located to provide approximately 75 to 85 feet of open space between the new residential units and the existing houses that front on 30th Street, N.E., and Adams Street, N.E. The distances are consistent with, and exceed in some instances, the distance between the fronts of many homes in the immediate neighborhood; (§ 2516.9.)

- (j) The proposed development will have no adverse impacts on public safety. In fact, the development of this vacant site is likely to increase public safety by establishing a stable residential community on the subject property. Moreover, the D.C. Fire and Emergency Medical Services Department ("Fire and EMS Department") has reviewed the proposed project and has no objections to the development; (Ex. 63.) (§ 2516.10(a)(1).)
- (k) The new water and sanitary sewer systems for the proposed development will be constructed to D.C. Water standards and specifications, and the proposed storm drainage and storm water management systems will be constructed to D.C. Department of Environment ("DDOE"), DDOT, and D.C. Water standards and specifications. The private construction of this infrastructure by the Applicant will further Policy IN-6.1.3 of the Infrastructure Element of the District's Comprehensive Plan, which provides that "developers should contribute to the cost of extending utilities to the project site or upgrading existing utilities to the specifications necessary for their proposed project"; (10 DCMR § 1317.5.) (§ 2516.10(a)(2).)
- (l) The subject property is located within close proximity to a number of public schools, including Marshall Elementary School, Burroughs Education Campus, Langdon Education Campus, and Spingarn High School. The Applicant submitted data indicating that each of these schools has capacity to accommodate any students from the proposed development. Thus, the proposed development is unlikely to impose an unreasonable burden on the public education system; (§ 353.2 and § 2516.10(a)(3).)
- (m) The subject property is located within reasonable proximity to a number of public recreation facilities, including the Fort Lincoln Aquatic Center and Recreation Center, the Arboretum Community Center, the Langdon Park Community Center, and the Theodore Hagans Cultural Center and Pool; (§ 353.3 and § 2516.10(a)(4).)

- (n) The proposed development will comply with the off-street parking requirements of § 2101.1 of the Zoning Regulations and will have no significant adverse impacts on traffic congestion in the surrounding area. The proposed project is required to provide 26 off-street parking spaces under § 2101.1 of the Zoning Regulations. (11 DCMR § 2101.1.) The new development will include a total of 28 parking spaces, which includes 10 on-street spaces, 11 garage spaces, and seven surface spaces. In addition, the residential units with garages include a total of 10 parking pads that can be utilized for additional parking, and the plan includes three parking spaces to be located in public space immediately adjacent to the subject property. The Zoning Regulations do not require off-street loading facilities for row dwellings or flats. Moreover, as indicated in the Transportation Evaluation memorandum prepared by Wells, the proposed residential development would add minimal traffic to the existing neighborhood streets. Projected levels of service with the proposed development would remain unchanged from existing conditions. In addition, as indicated in the Parking Occupancy Memorandum prepared by Wells, the parking provided in conjunction with the proposed development will exceed the number of parking spaces required by the Zoning Regulations. Additionally, although spillover parking into the adjacent neighborhood is not anticipated, the parking occupancy counts conducted by Wells demonstrate that street parking near the site is underutilized. Therefore, the neighborhood streets have the ability to accommodate potential parking overflow without adversely impacting the current neighborhood residents; (§ 353.3, § 2516.10(a)(5), and § 2516.10(c).)
- (o) The proposed development has been designed to complement the topography of the subject property and the architectural character of the surrounding community. The project is consistent with a number of the specific policies set forth in the Urban Design Element of the District's Comprehensive Plan, including Policy UD-1.2.1 which encourages the use of clustered development patterns to protect natural topographic features. (10 DCMR § 904.3.) By clustering the new dwellings on the subject property, the proposed development furthers the objectives of Policy UD-1.2.1; (§ 353.4 and § 2516.10(a)(6).)
- (p) The subject property is not located within any historic district and is not adjacent to any public park; Subsection 2516.10(a)(7) is therefore inapplicable to the present application;
- (q) The private roadway in the proposed project is appropriately designed and located to adequately accommodate the needs of the development's residents. The Applicant has aligned the connection between the proposed new private street and the existing 30th Place such that the street connection is more direct. In addition, the Applicant will be installing stop signs, pavement markings, and cross-walks at the intersection of the proposed new private street and the existing 30th Place, and

a striped median on the internal roadway and traffic flow arrows to better delineate the travel lanes. DDOT submitted a report confirming that these measures will improve traffic flow and pedestrian safety for the project. (Ex. 75.) In addition, the site plan for the project and location of the residential units represent a creative response to the site's topographical constraints as well as the need for open and green space on the site; (§ 2516.10(b).)

- (r) The proposed development will not have any adverse impact on the use or enjoyment of neighboring properties. The properties to the south are vacant property, warehouses and industrial uses in the C-M-1 Zone District. The residential neighborhood to the north and east will be separated from the proposed development by significant distances. Thus, the proposed development will not have any significant impact on other properties in the surrounding area; (§ 2516.10(d).)
- (s) OP submitted reports dated September 2, 2011 (Exhibit 12) and November 18, 2011 (Exhibit 15) indicating that the proposed map amendment, special exception and variance relief requests are not inconsistent with the goals, objective and policies of the District of Columbia Comprehensive Plan. The Fire and EMS Department also submitted a report dated January 30, 2011 indicating that it has no objections to the proposed project so long as construction is in compliance with the applicable ICC construction codes. (Ex. 63.) DDOT also submitted a report dated February 15, 2012, recommending approval of the applications. (Ex. 31.) (§ 2516.10(e).);
- (t) Subsection 2516.11 provides that the "Board may impose conditions with respect to the size and location of driveways; net density; height, design, screening, and location of structures; and any other matter that the Board determines to be required to protect the overall purpose and intent of the Zoning Regulations." (11 DCMR § 2516.11.) Based upon the evidence presented, as well as the OP and DDOT reports submitted in this case, the Commission finds that, with approval of the revised site plan marked as Exhibit 77 in the record of this case, no additional conditions or safeguards are necessary to protect the overall purpose and intent of the Zoning Regulations in this case; and
- (u) The Commission finds that the evidence of record demonstrates that the requested special exception relief "will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps." (11 DCMR § 3104.1.) The proposed development is consistent with each of the general purposes described in § 6-641.02 of the D.C. Code and § 101 of the Zoning Regulations, as well as the more specific purposes of the R-5-A Zone District. The proposed R-5-A Zone District is designed for

moderate-density dwellings. Consistent with that objective, the proposed development will include row dwellings, semi-detached dwellings, and flats, and will also preserve a substantial portion of the subject property as undeveloped open space. In addition, the proposed development will have no adverse impacts on the use or enjoyment of neighboring property in accordance with the Zoning Regulations and Zoning Map. The proposed new residential units have been located to provide 75 to 85 feet of open space between the new units and the existing houses that front on 30th Street, N.E., and Adams Street, N.E. The distances are consistent with, and exceed in some instances, the distance between the fronts of many homes in the immediate neighborhood. Thus, the proposed residential development will not adversely affect the use of neighboring properties. (§ 3104.1.)

37. The Commission, therefore, grants the requested special exception relief.

Variance Relief

38. The Applicant is seeking variances from § 401 (number of stories), § 402 (floor area ratio), § 403 (lot occupancy), § 404 (rear yard), § 405 (side yard), and § 2516 (front yard and vehicular ingress/egress width).
39. Under § 6-641.07(g)(3) of the D.C. Official Code and § 3103.2 of the Zoning Regulations, the Board, or Commission in this case, is authorized to grant a variance when an applicant demonstrates that (1) where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property; (2) the strict application of any regulation adopted under D.C. Official Code §§ 5-413 to 4-432 (1981) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; and (3) 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. *Capitol Hill Restoration Society, Inc. v. D.C. Board of Zoning Adjustment*, 534 A.2d 939, 941 (D.C. 1987). *See also French v. D.C. Board of Zoning Adjustment*, 658 A.2d 1023 (D.C. 1995).
40. Applicants for an area variance need only demonstrate that they will encounter "practical difficulties" if the variance is not granted. *See Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972) (noting that "area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden"). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be "unnecessarily burdensome."

See Washington Canoe Club v. D.C. Zoning Commission, 889 A.2d 995, 1001 (D.C. 2005).

41. The Commission finds that the subject property in this case is affected by an extraordinary condition resulting from a confluence of different factors. *See Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990) (holding that the District's zoning enabling statute "does not preclude the approval of a variance where the uniqueness arises from a confluence of factors").
42. The subject property is uniquely affected by the combination of the following factors: (1) the topography of the site, with ground elevations ranging from 65 feet to 120 feet; (2) an unusual and irregular shape; (3) its limited access to existing rights-of-way; and (4) the size and dimensions of the existing public alleys that bound portions of the subject property.
43. As shown on the plans, due to the curved shape of the subject property, the developable portion of the subject property has an east-west width of approximately 127 feet near the connection to 30th Place, N.E., widens to approximately 190 feet at its widest point, and then narrows back down to approximately 140 feet. Thus, given the need to install a new 25-foot private street on the site, useable sidewalks, and to widen the existing alley to provide reasonable circulation, any new moderate-density residential development with homes on either side of the new street would require zoning relief since the subject property's fixed dimensions do not allow for enough space to provide the necessary street and alley widths, combined with 20-foot front yards, 20-foot rear yards, and a reasonable footprint for units fronting on the new street.
44. The Commission finds that the combination of these factors results in an extraordinary and exceptional condition that imposes a number of significant development constraints on the subject property.
45. Within the R-5-A Zone District, residential dwellings may be constructed to a total height of no more than 40 feet and may contain no more than three stories. (11 DCMR § 400.1.) Although each of the principal buildings within the proposed development will comply with the maximum building height limitation of 40 feet, as detailed on the Lot Tabulation Sheet included with the plans, a number of the units will contain four stories as measured from the finished grade at the middle of the front of those buildings. This relief is the direct result of the topography of the site ranging from 65 feet to 120 feet, which results in the lowest level of units one through 10 counting as a story, and the lowest level of the remaining units counting as a cellar. In addition, the habitable space available in the four-story units is significantly reduced by the presence of the front-loaded garage on the ground floor. Therefore, the Commission finds that strict compliance with the maximum story requirement in this case would result in a practical difficulty in the reasonable development of the subject property.

46. The R-5-A Zone District permits a maximum of 0.9 FAR in the R-5-A Zone District. However, the Applicant is seeking density relief for the units on the individual lots. The Applicant has clustered the residential units due to the dramatic topography of the site, which limits the overall areas able to the development. The clustering of the units triggers the need for density relief as indicated on the Lot Tabulation Sheet included with the plans. Although the individual residential units do not meet the density requirement, the overall density of the project as a whole is 0.83 FAR, which is well below the 0.9 FAR allowed. Therefore, the Commission finds that strict compliance with the density requirements for each of the lots in this case would result in a practical difficulty in this case.
47. Under § 403.2 of the Zoning Regulations, a building in the R-5-A Zone District may not occupy more than 40% of the lot upon which it is located. However, due to design and layout features of the project, combined with the subject property's topography and the clustering of units to provide useable open space, and as detailed on the Lot Tabulation Sheet included with the plans, a number of units exceed the maximum permissible lot occupancy on individual lots. The Commission finds that strict compliance with the lot occupancy limitations in this case would result in a practical difficulty in the reasonable development of the subject property given that the increased lot occupancies are because the site is uniquely shaped, has a sloping topography, and the developable area is limited. Moreover, the overall lot occupancy is approximately 28.74%, which is less than the maximum permissible of 40%.
48. The Zoning Regulations provide that any structure located within an R-5-A Zone District must provide a rear yard with a minimum depth of no less than 20 feet. (11 DCMR § 404.1.) The theoretical building sites within the proposed development will include rear yards that range from a minimum depth of five feet to a maximum depth of over 22 feet. (See Lot Tabulation Sheet included in the Plans). Thus, a number of the dwellings within the proposed development require relief from the minimum rear yard requirement of § 404.1. The Commission finds that strict compliance with the rear yard requirements in this case would result in a practical difficulty since, in order to comply with the minimum rear yard requirements, the Applicant would be required to significantly reduce the width of the proposed new private roadway, which has been sized to meet DDOT and Fire and EMS Department requirements.
49. The Zoning Regulations provide that any structure located within an R-5-A Zone District must provide side yards with a minimum width of three inches per foot of height of building, but not less than eight feet. (11 DCMR § 405.9.) As shown on the Lot Tabulation Sheet included with the plans, the theoretical building sites within the proposed development will include side yards that range from a minimum width of approximately 1.67 feet to a maximum width of approximately 6.5 feet. Relief from the side yard requirement is dictated by the clustered development pattern of the proposed

project and the total width of each theoretical building site. Given the total width of each theoretical building site in the development, strict compliance with the minimum side yard requirements would result in the construction of a number of narrow and inefficient units. Therefore, the Commission finds that denial of the requested variance relief from § 405.9 would result in significant practical difficulties for the Applicant.

50. Subsection 2516.5 provides that any theoretical building site without street frontage must provide open space in front of the principal building's main entrance that is equivalent to either the required rear yard within the zoning district in which the site is located or to the distance between the building restriction line for the record lot and the public space upon which the record lot fronts. (11 DCMR § 2516.5(b).) Thus, in this case, each theoretical building site is required to include a front yard with a minimum depth of at least 25 feet. In addition, § 2516.6(b) requires that each means of vehicular ingress or egress to any principal building must be at least 25 feet in width. The proposed units will include front yards that range from a minimum depth of approximately 6.5 feet to a maximum depth of approximately 15.5 feet. Strict compliance with the front yard requirement of § 2516.5(b) would require the Applicant to narrow the private roadway, which would have an adverse impact on vehicle access to the site, including fire trucks and trash removal. The Applicant is also requesting variance relief from the requirement of § 2516.6(b) since the public alley located behind units 15 through 22 is not 25 feet wide. Although the private alley will not meet this minimum-width requirement, the Applicant is resurfacing and widening the alley from its current width of 15 feet to 20 feet in order to provide adequate vehicular ingress and egress. Moreover, as shown on the turning movement diagrams included with the plans, there is sufficient space for fire trucks and trash service.
51. The Commission finds that the requested variances can be granted without substantial detriment to the public good and without impairing the purpose, intent, and integrity of the Zone Plan as embodied in the Zoning Regulations and the Zoning Map. Although some of the proposed dwellings will exceed the number of stories permitted within the R-5-A Zone District, each of those buildings will comply with the maximum height requirement of § 400.1. The four-story units in the proposed development will have no more of an impact on the light or air of adjacent properties than three-story buildings constructed to the matter-of-right height of 40 feet. Similarly, the requested relief from the density, lot occupancy, rear yard, side yard, and front yard requirements will result in no substantial detriment to the public good and will be consistent with the Zone Plan. There will be a significant degree of separation between the proposed new residential dwellings and the existing homes in on the surrounding area. In addition, the proposed dwellings will be separated from one another a distance sufficient to provide adequate light and air to the buildings' residents. The density of the overall development is significantly less than permitted, and the development includes a substantial amount of open and green space.

52. The Commission, therefore, grants the requested variance relief.

Office of Planning Reports

53. By report dated September 2, 2011, OP recommended that the Commission schedule a public hearing on the application. (Ex. 12.) OP indicated that the proposed map amendment, special exception, and variance relief requests are not inconsistent with the goals, objectives, and policies of the Comprehensive Plan. OP indicated that the subject property is designated for "moderate density residential" uses, and that the existing R-1-B Zone District does not allow for the moderate density level of development of the subject property that is envisioned by the Comprehensive Plan. OP also indicated that the subject property is an infill site and that the proposed R-5-A Zone District provides for residential development that is of moderate scale and is not inconsistent with the Generalized Policy Map's designation of the subject property within a Neighborhood Conservation Area. OP included a detailed analysis of the elements of the Comprehensive Plan, and concluded that the proposed map amendment and the proposed development fulfills many of the Comprehensive Plan's objectives and policies for Land Use Element, Housing Element, Environment Element, and the Upper Northeast Area Element. OP also included an analysis of the special exception and variance relief. OP recommended that, prior to the public hearing, the Applicant should provide additional information, including detailed elevations of the side and rear of buildings and retaining walls; detailed landscape plan for the public open space areas as well as on each lot; drawings of views from and to the adjacent single family residences to demonstrate their relationship; grading plans; a complete lot tabulation chart; and a full analysis of the required special exceptions and variances.
54. By report dated November 18, 2011, OP recommended that the Commission schedule a public hearing on the application. (Ex. 15.) OP indicated that the Applicant responded to all of the Commission's comments at the September 12, 2011 public meeting, including a revised site layout to reduce the amount of pavement and increase the green space on the subject property; further improved the character and compatibility of the proposed development by incorporating design elements from neighborhood houses through the use of porches, roof lines, stoops and color scheme; reduced the number of units which, combined with the clustering of the proposed units, results in an appropriate amount of density for the subject property; and provided rear yards setbacks on most of the units. OP, therefore, recommended that the Commission set down the application for a public hearing. OP noted that it would continue to work with the Applicant, other District agencies, the ANC, and neighbors to ensure further refinement of the application and the resolution of concerns.
55. By report dated February 13, 2012, OP recommended final approval of the application. (Ex. 30.) OP indicated that the Applicant's revised materials demonstrate that the requested map amendment, special exceptions, and variances are not inconsistent with

the goals, objectives, and policies of the Comprehensive Plan. OP's report included an analysis of the contested issues, the map amendment standards, the Comprehensive Plan elements, the special exception standards, and the variance standards. OP concluded that the application meets all applicable standards for approval. OP, therefore, recommended approval of the requested map amendment, special exceptions, and variances.

DDOT Reports

56. DDOT submitted a report, dated February 15, 2012, recommending approval of the application. (Ex. 31.) DDOT indicated that it worked with the Applicant on a number of recommendations and that the Applicant responded positively to many of the recommendations. DDOT indicated that the proposed development will not result in any noticeable increases in intersection delays at any of the studied intersections. DDOT also indicated the amount of proposed parking is adequate given the size of the development, the neighborhood location, and Census data provided by the Applicant regarding car ownership. DDOT also confirmed that street parking near the proposed development is underutilized, and thus, even if there were an overflow of parking from the proposed development onto surrounding neighborhood streets, such an overflow could be accommodated without a significant impact on the current neighborhood residents. DDOT recommended that the Commission require the Applicant to: (i) construct a sidewalk on at least one side the 30th Place, N.E.; (ii) confirm that all sidewalks within the development will be ADA-compliant; (iii) install at least two inverted "U" shaped bicycle ramps within the development; (iv) significantly reduce the 30-foot curb radii at the access point of 30 Place, N.E.; (v) employ mitigation measures to alleviate the impact of tree loss and protect the remaining trees; and (vi) ensure that the alley to be widened by the Applicant will conform to DDOT standards and specifications.

57. The Applicant presented plans at the public hearing indicating that, in response to DDOT's recommendations, the Applicant will be constructing a sidewalk on the western side the 30th Place, N.E., and that the Applicant will be installing two inverted "U" shaped bicycle ramps within the development. (Ex. 40.) The plans also indicated that the Applicant reduced the curb radii at the access point of 30 Place, N.E., from 30 feet to 15 feet. The Applicant testified that all sidewalks within the development will be ADA-compliant, and that the alley to be widened will conform to applicable DDOT standards and specifications. The Applicant also indicated that it will be installing rain barrels and planting new trees in response to DDOT's request for the use of green infrastructure techniques to help mitigate the loss of existing trees on the subject property. The Applicant also testified that it will be complying with all applicable District of Columbia laws and regulations regarding the removal of any existing trees and the planting of new trees. Therefore, the Commission finds that the Applicant has incorporated DDOT's recommendations into the design of the proposed development.

58. DDOT submitted a memorandum, dated March 8, 2012, indicating that DDOT supports the Applicant's revised street layout plan. DDOT indicated that the proposed street layout, proposed stop signs, and addition of a striped median will allow for the safer flow of traffic. DDOT also indicated that the two new crosswalks will contribute to a safer pedestrian environment and help connect the development to the greater neighborhood pedestrian network. DDOT concluded that the Applicant's proposed street layout and markings will mitigate any safety concerns. (Ex. 75.)

Contested Issues

59. On March 14, 2012, ANC 5B submitted a letter indicating that although the ANC supports new development in the Gateway community, the ANC voted 6-0 to support the Gateway Civic Association's opposition to the applications. However, this letter did not identify "the issues and concerns of the ANC about the application or petition, as related to the standards against which the application or petition shall be judged" as required pursuant to § 3012.5(e) of the Zoning Regulations. Therefore, the Commission's findings in this section of the Order also respond to the ANC's implicit support of the concerns raised by the Gateway Civic Association.
60. The Gateway Civic Association and a number of individuals raised concerns regarding the density and character of the proposed development; potential traffic and parking concerns; environmental and construction issues; and the amount of requested relief.
61. The Commission has carefully reviewed and considered each of the points made both in writing and orally at the public hearing, and makes the following findings:
- (a) *Density and Character of the Proposed Development.* There was testimony that the project is too dense, includes too many units, and is inconsistent with the character of the surrounding neighborhood. With respect to density, the Commission notes that the subject property is designated as "moderate density residential" on the Comprehensive Plan's Future Land Use Map, and the Comprehensive Plan indicates that the proposed R-5-A Zone District is one of the zones cited in the Framework Element as consistent with the moderate-density residential category. Moreover, in changing the designation of the subject property from "low density residential" to "moderate density residential," the D.C. Council made it clear that additional density should be developed on the subject property. The Commission finds that the Applicant's proposal to rezone the subject property and construct the proposed development on the subject property is consistent with this objective. In addition, both OP and the Applicant's expert land planner presented a detailed analysis of the Housing, Land Use, and other applicable elements of the Comprehensive Plan, and both concluded that the proposed rezoning to R-5-A is not inconsistent with the Comprehensive Plan as a whole. Finally, the project's overall density, not including the proposed street is

0.83 FAR, and the project's overall lot occupancy, also not including the proposed street is 28.74%. Thus, the project's overall density is less than the proposed R-5-A Zone District's matter-of-right density of 0.9 FAR, and less than the effective matter-of-right density of 1.2 FAR for the current R-1-B zoning of the subject property. In addition, the overall lot occupancy of 28.74% is less than the matter-of-right lot occupancy of 40% permitted in the R-1-B and R-5-A Zone Districts. The proposed density is therefore within the limits of the range of residential zones.

The Applicant also submitted testimony and evidence demonstrating that, due to the relatively fixed infrastructure costs for the development, reducing the number of units from the proposal of 26 residential units to 10-14 residential units would significantly increase the infrastructure costs per unit. (Ex. 43.) The Applicant also submitted evidence demonstrating that reducing the number of units to 10-14 homes would require that these homes be priced in the range of \$550,000 to \$600,000, which is beyond what the market in the area would support, and would thus render the units infeasible. (Ex. 44.) In addition, the Applicant submitted a pro forma analysis demonstrating that: (i) reducing the number of units to 10-14, and even if those units were able to be sold at \$550,000 to \$600,000, then the project would incur a loss of \$687,400 for 14 units and a loss of \$1,137,000 for 10 units given the development's finished lot, construction, and soft costs; and (ii) reducing the number of units to 10-14, and selling the units at the actual current market rates of \$350,000 to \$415,000, then the project would incur a loss of \$3,487,400 for 14 units and a loss of \$2,987,000 for 10 units given the development's finished lot, construction, and soft costs. (Ex. 76, Tab B.) Therefore, the Commission finds that the Applicant has submitted substantial evidence demonstrating that it would be practically difficult to reduce the number of units in the proposed development.

With respect to the character of the proposed development, the Applicant has employed a number of features in order to make the proposed development compatible with the surrounding community. The Applicant's proposed development scheme will replace the existing under-utilized site with a high-quality, workforce housing project that is safe and affordable for the City's workforce. The Commission finds that a building can be compatible with the existing environment without exactly duplicating existing buildings, and that a new building does not necessarily need to be exactly the same height as its neighbors to be compatible. In this case, the Commission finds that the proposed new residential units are compatible with the surrounding community in terms of layout, scale, massing, materials, and color. The new units are organized in a traditional DC neighborhood pattern and front on the proposed new private street with their principal façade in full view from the new street. In addition, similar to other houses in the community, the proposed new residential units have individual

entries, stoops, and porches, and the Applicant has also incorporated a number of architectural techniques and features to address the apparent size of building elements, such as windows, doors, cornices and other features. The Applicant also revised the development and is now incorporating semi-detached units on Lot 15 through Lot 22. These units, which are the closest to the existing homes that front of 30th Street, have been reduced approximately nine feet in height per unit. In addition, each individual unit has been widened to 18 feet, and the total width of 36 feet for the combined semi-detached units is much more in character with the width of existing homes in the neighborhood. The semi-detached units are intended to read as a single home by employing roof lines and dormer gables that span both roofs. Moreover, the materials used, as well as the character of the materials used, respect those of the surrounding homes, and the colors of the new units complement those in the neighborhood.

- (b) *Traffic and Parking Concerns.* There was testimony that the project will have an adverse impact on traffic and parking in the immediate area. The Applicant's transportation expert submitted a detailed Transportation Evaluation memorandum, Parking Occupancy Evaluation Memorandum, and testimony at the public hearing, indicating that the proposed development will not have any adverse traffic or parking impacts on the surrounding community. As indicated in the Transportation Evaluation memorandum, Wells studied vehicular turning movements, pedestrian, and bicycle counts during peak hours for a number of intersections. The analysis demonstrated that proposed residential development would add minimal traffic to the existing neighborhood streets, and that projected levels of service with the proposed development would remain unchanged from existing conditions. In addition, as indicated in the Parking Occupancy Memorandum prepared by Wells, the parking provided in conjunction with the proposed development will exceed the number of parking spaces required by the Zoning Regulations. Additionally, although spillover parking into the adjacent neighborhood is not anticipated, the parking occupancy counts conducted by Wells demonstrate that street parking near the site is underutilized. Therefore, the neighborhood streets have the ability to accommodate potential parking overflow without adversely impacting the current neighborhood residents. DDOT's report also indicated that the proposed development will not result in any noticeable increases in intersection delays at any of the immediately surrounding intersections; that the amount of proposed parking is adequate given the size of the development, the neighborhood location, and car-ownership data provided; that street parking near the proposed development is underutilized; and that there is sufficient capacity on surrounding streets to accommodate any overflow parking from the proposed development without a significant impact on the current neighborhood residents. (Ex. 31.)

The Commission accepts the expert conclusions, and the evidence and testimony presented by the Applicant and DDOT, and therefore finds that the proposed development will not have an adverse impact on traffic and parking in the immediate area.

- (c) *Environmental and Construction Issues.* A number of individuals testified regarding potential environmental and construction impacts during construction of the proposed development. As a preliminary matter, the Commission notes that its review of a map amendment application does not include the impacts of a specific project, but only the suitability of the amendment for the subject property and the consistency of the proposal with the Comprehensive Plan. A review of a special exception or variance application does examine the impacts of a project, but only those impacts that flow from the zoning relief requested, not the impact of project construction. Therefore, the construction-related issues raised are not relevant to the Commission's determination whether to grant the applications before

Nevertheless, the Commission credits the Applicant's evidence and testimony that the project has been designed to meet all applicable District of Columbia construction and utility requirements, including DDOT, DDOE, D.C. Water, and Fire and EMS Department requirements.

The Applicant testified that it met with the Fire and EMS Department, and that the project will comply with the applicable fire and construction codes, and that the fire lanes will be properly identified and marked to prevent parking anywhere other than designated parking spaces so as to not hamper fire department access to the development. Moreover, as shown on the civil engineering sheets included with the plans filed in this case, the subject property will be graded to collect the runoff produced on the subject property with a series of inlets both in the alley and in the courtyard area that will direct the flow of storm water to the proposed stormwater management facility for storage and treatment prior to exiting the site through a storm drain connection in 30th Street, N.E. Thus, no storm water will be directed onto off-site properties. The plans also indicate that storm water quality and quantity treatment will be handled in a combination storm filter vault and 112 feet of 4-foot diameter storage pipe.

The Applicant also testified that it is only removing trees in the portion of the site to be developed, and that the remaining portions of the subject property will be preserved as a wooded area, cleaned, and maintained by a homeowners' association to be created for the development after it is constructed. The Applicant also submitted a survey of the existing trees on the portion of the property to be developed, and a detailed inventory identifying the location, species, size, and condition of each tree. None of the trees in the portion of the

property to be developed are either "champion" or "specimen" trees. Moreover, as indicated during the public hearing, the Applicant will be complying with all applicable District of Columbia laws and regulations regarding the removal of any existing trees and the planting of new trees.

Therefore, the Commission finds that the proposed development will not have any adverse environmental or construction impacts on the surrounding area.

- (d) *Amount of Zoning Relief.* Gateway Civic Association and a number of the individuals objected to the number of variances requested in this case. However, as described above, the Commission finds that the Applicant meets the applicable standards for special exception and variance relief in this case. The Commission also finds that the type and degree of relief requested in this application is similar to that approved by the Board of Zoning Adjustment ("BZA") and the Commission in other new residential developments in R-5 Zone Districts. For example, in BZA Application No. 17837, the BZA granted variances from the maximum number of building stories, lot area, lot width, rear yard, side yard, and § 2516 requirements, and a special exception pursuant to § 2516, to permit the construction of a residential development including one-family detached dwellings in the R-1-B Zone District. The D.C. Court of Appeals upheld the granting of this relief in *Fleischman v. District of Columbia Board of Zoning Adjustment*, 27 A.3d 554 (D.C. 2011). (See also Z.C. Order No. 06-30 (approving a map amendment to zone unzoned land to the R-5-A Zone District, and granting relief from the lot area, rear yard, side yard, and court requirements to permit the construction of a residential development including row dwellings, flats, and apartment buildings); Z.C. Order No. 05-30 (approving a map amendment from the R-1-B Zone District to the R-5A Zone District, and granting relief pursuant to § 2516, and from the side yard, rear yard, and front yard requirements to permit the construction of a residential development including single family homes, row dwellings, and apartment units); BZA Order No. 17753 (approving special exception relief pursuant to § 2516 and variance relief from the lot occupancy, lot area, rear yard, and side yard requirements for property split-zoned R-4 and R-3 to permit the construction of a residential development including row homes and semi-detached dwellings).

CONCLUSIONS OF LAW

1. The Commission's authority to amend the Zoning Map derives from the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, D.C. Official Code § 6-641.01 *et. seq.*) ("Zoning Act").
2. Section 1 of the Zoning Act, authorizes the Commission to regulate the uses of property in order to "promote the health, safety, morals, convenience, order, prosperity, or general

welfare of the District of Columbia and its planning and orderly development as the national capital.” (D.C. Official Code § 6-641.01.)

3. Section 2 of the Zoning Act provides that the "zoning regulations shall be designed to lessen congestion on the street, to secure safety from fire, panic, and other dangers to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein." (D.C. Official Code § 6-641.02.)
4. Section 3 of the Zoning Act, among other things, authorizes the Commission to amend the zoning regulations and maps. (D.C. Official Code § 6-641.03.)
5. The Commission concludes the proposed map amendment is consistent with the purposes of the Zoning Act. The amendment will allow use of the property consistent with its designation on the Future Land Use Map, as amended by the "Comprehensive Plan Amendment Act of 2010," (D.C. Law 18-361, 58 DCR 908), for moderate-density residential uses.
6. In amending the Zoning Map, the Commission is constrained by the limitation of § 492(b)(1) of the District of Columbia Home Rule Act, D.C. Official Code § 6-641.02, that the Zoning Map be "not inconsistent" with the Comprehensive Plan. The Commission concludes that approval of the requested map amendment is not inconsistent with the Comprehensive Plan. The requested map amendment furthers the goals of the Comprehensive Plan, and promotes orderly development in conformity with the Zone Plan as embodied in the Zoning Regulations and Map.
7. The Commission also concludes that the requested map amendment is in the best interests of the District of Columbia and will benefit the community in which the property is located.
8. Based upon the record before the Commission, the Commission concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 for variances from § 401 (number of stories), § 402 (floor area ratio), § 403 (lot occupancy), § 404 (rear yard), § 405 (side yard), and § 2516 (front yard and vehicular ingress/egress width), and that there exists an exceptional or extraordinary situation or condition related to the

subject property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested 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. The Commission also concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 353, 2516, and 3104.1, and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Commission 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.

9. 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 issues and concerns expressed in the affected ANC's written recommendation. In this case, ANC 5B did not identify "the issues and concerns of the ANC about the application or petition, as related to the standards against which the application or petition shall be judged" as required pursuant to § 3012.5(e). Nonetheless, the Commission considered the ANC's support for the Gateway Civic Association's opposition as its adoption of the opposition's issues and concerns. Based upon the record before it and for the reasons set forth in the Findings of Fact, particularly the Contested Issues section, the Commission did not find these issues and concerns persuasive and instead concluded that the Applicant has met the standards for approval of the requested applications. Having addressed each issue and concern, the Commission gave the ANC the great weight to which it is entitled.
10. 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. The Commission concurs with the OP's recommendation for approval, and has given the recommendation the great weight to which it is entitled.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for an amendment of the Zoning Map to change Lots 25, 26, 27, 28, 802, 803, 804, 805, 806, and the closed paper street in Square 4376 (as shown on the plat attached to this Order), from the R-1-B Zone District to the R-5-A Zone District.

Further, in consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the applications for review pursuant to § 353 of the Zoning Regulations for a special exception to permit a new residential development in the R-5-A Zone District; review pursuant to § 2516 of

the Zoning Regulations for a special exception to permit two or more principal buildings to be erected on a single subdivided lot; and review pursuant to § 3103 of the Zoning Regulations for variances from § 401 (number of stories), § 402 (floor area ratio), § 403 (lot occupancy), § 404 (rear yard), § 405 (side yard), and § 2516 (front yard and vehicular ingress/egress width).

The development shall be developed in accordance with the architectural plans and elevations prepared by PGN Architects, PLLC, dated January 24, 2012 and marked as Exhibit 28, as supplemented by the PowerPoint presented at the public hearing and marked as Exhibit 40, and the revised sheets dated January 24, 2012 and marked as Exhibit 77 in the record.

Pursuant to 11 DCMR § 3130 this Order, to the extent it grants special exception and variance relief, shall not be valid for more than two years after it becomes effective unless, within such two-year period, the applicant files plans for all of the proposed structures with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit(s), or the applicant files a request for a time extension pursuant to § 3130.6 at least 30 days prior to the expiration of the two-year period and that such request is granted. No other action, including the filing or granting of an application for a modification pursuant to §§ 3129.2 or 3129.7, shall extend the time period.

Pursuant to 11 DCMR § 3125, approval of an application for a variance or special exception 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 Commission as the same may be amended and/or modified from time to time by the Commission.

The Applicant is required to comply fully with the provisions of the D.C. Human Rights Act of 1977, D.C. Law 2038, as amended, D.C. Official Code § 2-1404.01 *et seq.* ("Act"). This order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, martial 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 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.

On March 26, 2012, upon the motion of Vice Chairman Schlater, as seconded by Commissioner Cohen, the Zoning Commission **APPROVED** this application at its public meeting by a vote of 4-1-0 (Konrad W. Schlater, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to approve; Anthony J. Hood opposed).

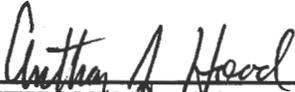
Z.C. ORDER NO. 11-19

Z.C. CASE NO. 11-19

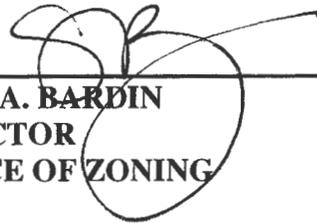
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On April 30, 2012, upon the motion of Commissioner May, as seconded by Commissioner Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of 4-1-0 (Konrad W. Schlater, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to adopt; Anthony J. Hood opposed).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become effective upon publication in the *D.C. Register*; that is on May 18, 2012.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 11-19

MAY 21 2012

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 11-19 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|---|---|
| 1. D.C. Register (via e-mail) | 6. Councilmember (Vacant) |
| 2. Kyrus Freeman, Esq.
Holland & Knight, LP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006 | 7. DDOT (Martin Parker) |
| 3. ANC 5B
2116 R Street, N.E.
Washington, D.C. 20002 | 8. Melinda Bolling, Acting General Counsel
DCRA
1100 4 th Street, S.W.
Washington, D.C. 20024 |
| 4. Commissioner Jacqueline Manning
ANC/SMD 5B09
2116 R Street, N.E.
Washington, D.C. 20002 | 9. Office of the Attorney General (Alan
Bergstein) |
| 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 10. Robert Farr, Director
for Real Property Taxes
D.C. Assessor's Office
1100 4 th Street, S.W. 5 th Floor
Washington, D.C. 20024 |

ATTESTED BY:

A handwritten signature in cursive script that reads "S. S. Schellin".

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