BEFORE THE BOARD OF ZONING ADJUSTMENT, D. C.

Application No. 11631, of Stanley Martin Communities, Incorporation and The Catholic University of America, pursuant to Sections 8207.2 and 8207.1 of the Zoning Regulations for special exceptions to permit the erection of row dwellings and an apartment house in the R-5-A District as provided by Section 3105.42, for approval of roof structures as provided by Section 3308, to permit establishment of a Community Center including a day care center, swimming pool, tennis court and playground as provided by Section 3101.45, to permit apartment house adjuncts, Section 3105.43, and a variance to permit parking in front yard as provided by Section 8207.11 at the premises located on the east side of Puertico Rico Avenue and Sixth Street, N. E., between Taylor and Buchanan Streets, N.E., Parcel 135/53, part of Lot 77, in Square 3810 and part of Lot 805 in Square 3894.

HEARING DATES: May 9, 1974, July 17, 1974

DECISION DATE: July 23, 1974, October 25, 1974

ORDERED:

> That the opposing party's motion for reconsideration, rehearing, and motion to stay the Board's Order in the above case is denied, for lack of four (4) affirmative votes.

BY ORDER OF D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: James E. Miller
JAMES E. MILLER
Secretary to the Board

FINAL DATE OF ORDER: NOV 04 1974

Before the Board of Zoning Adjustment, D. C.

Application No. 11631, of Stanley Martin Communities, Incorporated and The Catholic University of America, hereinafter collectively referred to as "applicant", pursuant to Sections 8207.2 and 8207.1 of the Zoning Regulations for special exceptions to permit the erection of row dwellings and an apartment house in the R-5-A District as provided by Section 3308, to permit establishment of a community center including a day care center, swimming pool, tennis court and playground as provided by Section 3101.45, to permit apartment house adjuncts, Section 3105.43, and a variance to permit parking in front yard as provided by Section 8207.11 at the premises located on the east side of Puerto Rico and Sixth Street, N. E. between Taylor and Buchanan Streets, N. E., Parcel 135/53, part of lot 77 in Square 3810 and part of Lot 805 in Square 3894.

FINDINGS OF FACT:

I. The subject property is located in an R-5-A District.

2. The applicant proposes to improve the subject property by constructing a total of 648 dwelling units, 324 to be row houses and 324 to be located in a 10-story condominimun building.

3. The subject property covers a level area of approximately 35 acres.

4. The 648 dwelling units proposed by the applicant create a density of approximately 18 units per acre of land.

5. In a report submitted by the National Capital Planning Commission, the Commission reported and the Board finds, that the proposed residential development is in conformance with the "General Land Use Objectives 1970/1985 element of the Comprehensive Plan for the National Capital", prepared by the National Capital Planning Commission, that it will provide recreation and other services to accommodate the residents of the project and that it does not conflict with any public plans or projects. The Commission recommended approval of the proposed development.

6. In a report submitted by the Office of the Assistant to the Mayor for Housing Programs, that office recommended the

approval of this application and reported, and the Board finds, that the applicant's proposal is consistent with the government policy of providing for home ownership in the District of Columbia.

7. The Office of Planning and Management recommended approval of the subject application in a detailed report and based the recommendation on its favorable analysis of the following planning considerations: The proposed land use and scale of development would strengthen and extend the low density character of the adjacent neighborhoods; the project will help meet the city's housing needs; and the provisions in the proposal concerning site plan; light and air, parking recreation and landscaping.

8. Opposition at the public hearing objected to the hearing of the subject application, stating that no Comprehensive Plan for the Upper Northeast area of the city has been prepared by the District of Columbia Government, following the implementation of home rule. The opposition also requested a moratorium be enacted by the Board for a period of 190 days or until such time that a Comprehensive Plan is developed for the Upper Northeast section of the city.

9. Based upon the reports and recommendations of the National Capital Planning Commission, the Office of the Assistant to the Mayor for Housing Programs and the District of Columbia Office of Planning and Management, the Board finds that the proposed development conforms to the National Capital Planning Commission's Comprehensive Plan for the District of Columbia and the official Zoning Map and Plan included in the District of Columbia Zoning Regulations, enacted pursuant to the Zoning Act of June 20, 1938, 52 Stat. 797.

10. The Board finds that there has been community participation in the proposed development. Community representatives of the Upper Northeast section of the city, which would be affected by the proposed development, have met and consulted with the applicant, representatives of the proposed development and Project Home of the Mayor's Housing Office.

11. In a report submitted by the D. C. Department of Highways and Traffic, the Department stated, and the Board finds, that the capacity of the street system in the vicinity of the development is adequate to accommodate traffic generated by the

development. The report also stated, and the Board finds, that the applicant proposes sufficient off-street parking facilities to assure that no encroachment on the parking space of surrounding residential streets is anticipated.

12. Opposition to the subject application objected to the proposed development on grounds that the increase of traffic in the neighborhood would create additional air pollution caused by automobile exhaust fumes. The opposition also objected to this proposed development on grounds that the increase of density in the neighborhood as a result of the proposed 648 dwelling units would cause sewage problems.

The Board finds that the record does not support the above noted objections; additionally, the Board finds that the public services are adequate to accommodate the residents of the project.

13. A report was received from the D. C. Board of Education, dated April 15, 1974, stating that the increase in number of students as a result of the proposed development would not adversely affect the ability of the public schools to provide services for additional students. The Board of Education had no objection to the proposed development.

This report was not subject to cross-examination at public hearing because no witness appeared to present it to the Board. For this reason, the opposition refused to agree to waive cross-examination and allow the Board to give weight to the report at public hearing.

The Board, at its Executive Session of June 6, 1974, pursuant to Section 3.42 of the rules of Practice and Procedure, found the report of the Board of Education to be full and complete on its face without regard to the opposition's objections.

14. The D. C. Board of Education submitted, after public hearing and after the record was closed, a revised report, filed June 12, 1974, on the subject application which stated an opposite conclusion concerning the impact of the proposed development regarding the ability of the public schools to provide services to additional students, and recommended that the application be denied.

Because Section 3105.42 of the Regulations requires the Board to refer this application to the Board of Education, it is the duty of the Board to find facts which relate to the compatibility of the proposed development with the neighborhood. In the interest of those people who would be affected by the development and all concerned parties, the Board scheduled a rehearing, limited to the Board of Education's report, on July 17, 1974, so that a representative of the Board of Education could present the revised report and be cross-examined by the parties.

15. The Board finds, after the hearing on the revised Board of Education report and cross-examination of representatives of the Board of Education, that no weight can be given to the report or recommendation therein, because the representatives of the Board of Education failed to substantiate the conclusions flowing from the report.

16. The Board finds that the landscaping plans for the subject development are appropriate and that the applicant has paid careful attention to the environmental aspects of the project by attempting to preserve all older trees and by appropriately landscaping other areas to produce a favorable living environment.

17. The Board finds that the applicant will provide a total of 1024 parking spaces including exterior and garage facilities for the proposed development, which is more parking than required as a matter of law.

18. Mr. Stephen G. Petersen, qualified as a traffic engineering expert, testified, and the Board finds, that traffic which would be generated by residents of the proposed 648 unit development can be accommodated by the street system in the vicinity of the site without serious adverse impact.

19. The Board finds that, because the applicant proposes to locate parking spaces in the front yard of 38 row house units within ten feet of each of the dwellings, an area variance is required by this application from Section 7205.12 of the regulations.

20. The Board takes notice of the fact that, under the applicable sub-division and Zoning Regulations, the applicant could build to a density of approximately 12 units per acre at

the subject site, as a matter of right, by constructing semi-detached dwellings. This would entail 20% deduction from the property for street dedication and to provide all lots with street frontage. The Board finds that the increase in density is off set by the manner in which the applicant has attempted to meet community concerns about density and type of development.

21. The Board finds that the front yard parking spaces proposed for 38 row house units would allow the applicant to provide needed parking on the subject property which would relieve the potential impact of additional on-street parking in the surrounding community as a result of the proposed development.

The Board finds that the parking variances requested by the applicant are necessitated by the provisions of Section 7516 of the Zoning Regulations, which permits two or more principal buildings or structures to be erected on a single sub-divided lot. An anomaly exists in that certain of the townhouse dwellings have no street frontage, which requires that the fronts of such buildings be arbitrarily located on theoretical buildings sites where the principal entrances of the said buildings are located. This requires, in the case of certain townhouse units that parking spaces be provided in the front portions of the theoretical lots, especially because more parking spaces have been provided than the code requires.

22. The Board finds that the roof structure proposed for the highrise development will contain elevator equipment, domestic hot water generators, air conditioning equipment and cooling towers for public spaces, and stairs and that the floor area ratio of such penthouse will not exceed the allowable floor area ratio permitted by Section 3308 of the regulations, and that the architectural finish of the roof structure will be of the same material as the street facade of the building.

23. The Board finds that the proposed community center (including day-care center), playgrounds, swimming pools, and tennis courts to be provided by the developer will be operated by the condominium owners through an association to be initiated by the developer. These facilities will not be organized for profit, will offer no article of commerce for sale, will generate insignificant amounts of noise and traffic, and will be reasonably necessary or convenient to the neighborhood involved. In addition, such amenities will be organized solely for the promotion of the social welfare of the University Park Community and neighborhood.

24. The Board finds that the proposed convenient commercial adjuncts to be located in the apartment house are designed to serve the daily living needs of the residents thereof, by making available food, drugs, and similar personal services. Such uses will be limited to the main floor of the apartment building; provide no direct entrance thereto from the outside of the buildings; will be invisible from any sidewalk; will be characterized by no signs or displays visible from the outside of the building indicating the existence of such adjuncts; and the center of the principal entrance of such apartment house is more than one-fourth mile walking distance from the nearest principal business street frontage of any business district previously established and operating in a commercial or industrial district.

25. If this application is granted, the applicant proposes to construct this development in 5 phases, to be completed in approximately 6 years.

26. The Board finds that the parking variances requested by the applicant, if granted, would alleviate the need for the people residing in row-houses to park on the streets located in the surrounding neighborhood of the subject property. Further, the Board finds that strict application of these regulations would create additional on-street parking congestion to the neighborhood surrounding the proposed development.

DECISION AND CONCLUSIONS OF LAW:

The Board has carefully reviewed the proposed University Park Development in accordance with the standards and requirements of Section 3307 of the Zoning Regulations, and concludes that the requirements thereof, have been satisfied. In addition, the Board finds that the proposed development is in accordance with the standards set forth in Section 3105.42 in that the required referrals have been made, and all agencies, excepting the second report of the Board of Education, which report was not found credible, have had favorable comments and recommendations concerning the specific aspect of the project within their respective areas of expertise. The proposed development also is in accordance with the standards set forth in Section 8207.2.

In addition, the Board has made an analysis of the various factors involved, and has concluded that the public streets, recreation facilities and other services to accommodate the

residents of the project will be adequate; that the project will be consistent with proposed public plans and projects, including the National Capital Planning Commission "Land-use-objectives". The Board also agrees with all expert testimony that the arrangement of buildings and structures of the project, and its provisions for light, parking, air, recreation, landscaping and grading -- as they relate both to the future residents of the project and surrounding neighborhood -- are highly favorable and well designed, and will represent an asset to the District of Columbia.

The Board is not unmindful of the fact that on April 16, 1974, the District of Columbia City Council issued a resolution regarding development in various sections of the city, particularly Northeast. The Board agrees with the Council that zoning approvals of proposals for major developments should accord with sound planning principles, and should support the goals and the objectives of the city and its residents, taking into account the needs of the affected communities, the rights of property owners, and the adequacy of public facilities. The Board finds that the long development process associated with this project has been accompanied by appropriate municipal planning and meaningful citizen participation.

Citizen witnesses who have opposed this project have conceded, under questioning by the Board, that they have had timely and adequate opportunity to consider all aspects of the project, and that full disclosure has been made by the developer at various stages. Thus, there has been meaningful citizen participation to the extent that citizens have been afforded an opportunity to make informed comments and recommendations both to the developer and to various government agencies. We do not believe that the concept of "meaningful citizen participation" empowers citizen groups to exercise "veto" rights over development, when such development is in accord with generally accepted principles of sound planning and the applicable Zoning Regulations. In view of the above, the Board does not reach the question of the legal affect of the resolution on matters pending before the Board.

With respect to the other special exceptions sought in connection with review of this project, the Board is of the opinion that the granting of such exceptions will provide needed and desirable amenities for the project, and concludes that they will be in harmony with general purpose and intent of the Zoning Regulations and Maps, and will not tend to adversely

affect the use of neighboring property in accordance with said Zoning Regulations and Maps.

The Board is also of the opinion, with respect to the variance of parking spaces applied for, that strict application of the provisions of Section 7205.12, in the context of a project of this type, will result in peculiar and practical difficulties to the owner, which difficulties should be relieved by permitting parking in the front yards of certain townhouse units. The Board concludes that such action will not be to the detriment of the public good, and will not impair the intent, integrity, purpose of the zone plan as embodied in the Zoning Regulations and Maps. On the contrary, the Board feels that permitting the variance requested will make the project a more desirable and attractive development, both for the residents thereof, and for the surrounding neighborhood.

The Board is further of the view that grant of the roof structure special exception requested is in compliance with the regulations governing said subject matter in that the structure does not exceed the allowable floor area ratio for such structures, and is in accord with the stated requirements respecting the finish thereof and the facilities to be contained therein.

ORDERED: That the above application be GRANTED, and that the applicant appear before the Board for further processing of each phase of development commencing when the applicant have completed the first phase of development and contemplate proceeding with the 2nd, 3rd, 4th, 5th phases of the development respectively.

HEARING DATE: May 9, 1974, July 17, 1974

DECISION DATE: July 23, 1974

VOTE: 4-1 (Lilla Burt Cummings, Esq., dissenting).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED By: James E. Miller
JAMES E. MILLER
Secretary to the Board

FINAL DATE OF ORDER: SEP 20 1974

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.