

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 519
Case No. 85-20C
February 9, 1987
(Abrams and Associates - PUD and Map)

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on July 10, 21 and 31, and October 9, 1986. At those hearing sessions the Zoning Commission considered an application from Samperton Enterprises, and Abrams and Associates for consolidated review and approval of a Planned Unit Development (PUD) and related map amendment pursuant to Sections 2400 and 102 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of Chapter 30 of the Zoning Regulations.

FINDINGS OF FACT

1. The application, which was filed December 24, 1985, originally requested preliminary review and approval of a PUD and related change of zoning from R-5-B and C-2-B to C-3-B for lots 11, 12, 13, 16 and 802 in Square 1661, with portions of an alley proposed to be closed. By letter dated February 5, 1986 the applicants requested that application be amended to request a consolidated review and approval of the PUD and map amendment.
2. The applicants propose to construct a mixed-use development consisting of residential, office and retail uses and a child care facility.
3. The R-5-B District permits matter-of-right medium density development of general residential uses including single-family dwellings, flats, and apartments to a maximum lot occupancy of 60 percent, a maximum floor area ratio (FAR) of 1.8 and a maximum height of 60 feet.
4. The C-2-B District permits matter-of-right medium density development, including office, retail, and all kinds of residential uses to a maximum FAR of 3.5 with nonresidential uses limited to 1.5 FAR, a maximum

height of 65 feet and a maximum lot occupancy of 80 percent for residential uses.

5. The C-3-B District permits matter-of-right major business and employment centers of medium density development including office, retail, housing, and mixed uses to a maximum height of 70 feet/six stories, a maximum FAR of 5.0 for residential and 4.0 for other permitted uses, and a maximum lot occupancy of 100 percent.
6. Under the PUD process of the Zoning Regulations, DCMR, Title 11, the Zoning Commission has the authority to impose development conditions, guidelines, and standards which may exceed or be lesser than the matter-of-right standards. The Commission may also approve uses that are permitted as a special exception by the BZA.
7. The PUD site is located at Wisconsin Avenue, Jenifer and 43rd Streets, N.W. and bounded by the Miller Company site to the north, 43rd Street to the east, Jenifer Street to the south and Wisconsin Avenue to the west. The site encompasses the southern portion of the subject square. The subject site abuts, to the north, the site of Zoning Commission Case No. 86-21F/85-9P, the Sahm/Miller Companies PUD. The PUD site is comprised of approximately 31,676 square feet of land area. The PUD site is presently split-zoned with the C-2-B District designated for the portion of the site west of the alley and the R-5-B District for the portion east of the alley.
8. The existing site is developed with the four-story, with basement, Columbia Federal Savings and Loan Association commercial buildings fronting on Wisconsin Avenue and a parking lot to the rear.
9. The zoning pattern in the area includes: to the east, northeast and southeast, the R-2 District; to the north, the R-5-B and the C-3-A Districts; to the west, the C-2-B and C-3-A Districts; to the south, the R-5-B and C-2-B Districts with the C-2-A and C-2-B Districts beyond. Further to the north, northwest and west is Montgomery County, Maryland.
10. The PUD site is located in an area which contains residential to the east, and commercial to the west, north, northwest, south and southwest.
11. The Generalized Land-Use Element Map of the Comprehensive Plan for the National Capital shows the area in the vicinity of Square 1661 to include both the Mixed Use Medium Density Residential category and the

Medium Density Commercial category. The subject area is also identified as a commercial regional center, and a Metrorail station development opportunity area.

12. At the time the Zoning Commission published a Notice of Public Hearing in the D.C. Register on June 6, 1986, it gave notice of special procedures applicable to this case in order to regulate the course of the hearing, to establish reasonable time limits for witnesses and to fairly allocate time among the parties and others. Pursuant to that notice, a prehearing conference was scheduled for Monday, June 16, 1986. At that time, the Zoning Commission determined which persons would be admitted as parties, which witnesses would be accepted as experts, the amount of time to be allocated to each party and to other persons, and ruled upon some procedural matters. The Commission incorporated the records of Case No. 85-16F/84-20P (Donohoe PUD) and Case No. 86-21F/85-9P (Miller PUD) into the record of the subject case, including but not limited to various public reports and studies, and other evidence that would also apply to this case.
13. As a preliminary matter at the further hearing on October 9, 1986, Mazza Gallerie requested party status. The Commission finds that Mazza Gallerie had notice of the proposed development and sufficient opportunity to be a party to this case in the earlier hearings. The attendant facts and circumstances have not changed to such a degree that Mazza Gallerie would not have had notice of possible street improvements. The Commission denied the request.
14. The applicants propose to construct a development which will consist of an office and retail component to be located at the corner of Wisconsin Avenue and Jenifer Street and a residential component with a child care facility which will face 43rd Street. There will be two levels of underground parking to accommodate 252 cars, a through-square connector for vehicular traffic and a pedestrian access to the Metro station.
15. The applicants propose to provide direct underground pedestrian connection to the Friendship Heights Metrorail Station at the lowest of the three retail levels through the proposed Miller and Donohoe projects. The Friendship Heights Metrorail Station is the only station in the entire Metrorail system that is a four-portal station. The portals will serve the Chevy Chase Metro Building, Woodward & Lothrop, Inc. department store, the Mazza Gallerie and the entire integrated development of the subject Square 1661.
16. The applicants propose under one alternative, to

restrict the second level of the project to service-type retail/office use. A list of examples was submitted for the record. The proposed uses are for service establishments common to neighborhood shops. These retail uses would be convenience services for both employees and neighborhood residents. The applicants testified that because the site is small and the rear 20 percent is designated for the through-square connector, that the proposed development cannot accommodate a major retail atrium or concourse. The proposed project could not, therefore, have a destination retail draw. The applicants offered a second alternative which would restrict the second level to office use. The Commission finds that the applicants have adequately addressed the concerns regarding the type of retail uses and finds that the alternative is the preferable approach.

17. The proposed development will include general retail uses on the first and Metro levels to maintain pedestrian activity on the street level and to enhance the pedestrian travel in the below-grade Metro connector. The Commission finds that retail uses on the Metro and ground levels will enhance the regional center and encourage pedestrian use of the Metro connector.
18. The applicants propose to restrict certain uses in connection with the roof-top garden to ensure that the facility will not be a nuisance to the employees of the building, the residents of the dwelling units or the local neighborhood. The Commission finds that the applicant has adequately addressed its concern about the roof-top management plan.
19. The applicants described, through its architect, the new design of the residential units on 43rd Street and the facade on Wisconsin Avenue. The Commission finds that the revised residential plan is preferable to the previous plan because it is more compatible with the existing residences on 43rd Street. As to the design of the Wisconsin Avenue facade, the Commission finds that the original plan is preferable.
20. The proposed development will include a height of 90 feet for the office/retail spaces (exclusive of penthouse), terracing down to 39 feet for the residential component. The project has an FAR of 5.15 for a gross floor area of approximately 174,218 square feet including 31,676 square feet for retail use, 10,140 square feet for residential use, 2,530 square feet for the child care center, and 129,872 square feet for office use. The maximum lot occupancy proposed will not exceed 95 percent.

21. The applicants propose the following public benefits and amenities:
 - a. Superior building design comprising a moderate height of 90 feet, a height setback from 43rd Street, and articulated curved facade at the intersection of Jenifer Street and Wisconsin Avenue, landscaped balconies, and a residential component;
 - b. Pedestrian Metro access passageway;
 - c. A significant amount of retail space given the limited site area in order to emphasize the regional center concept;
 - d. Full streetscape with landscaping along Wisconsin Avenue, Jenifer Street and 43rd Street;
 - e. Six to eight dwelling units, comprised of one and two bedroom styles;
 - f. A rooftop garden which will provide a passive park-like setting and serve to buffer the commercial area from the residential units on 43rd Street;
 - g. A transportation management program which will minimize the traffic impact of the project;
 - h. A first source employment agreement with the District of Columbia to afford direct benefits from the proposed development to the residents of the District of Columbia;
 - i. A minority business program which will promote such businesses;
 - j. The through-square connector which covers approximately 20 percent of the total site area and which will provide the final, vital transportation link constructed, operated and maintained by the developers;
 - k. Participation in the Metro access fee at the portal of Western and Wisconsin Avenues;
 - l. The funding and implementation of the joint road improvements program proposed by the Department of Public Works;
 - m. Creation of approximately 600 new jobs for the District of Columbia; and

- n. An estimated \$1,300,000 in tax revenue per year.
22. The applicants have agreed to fund and implement the neighborhood traffic mitigation study, pursuant to an agreement with the Department of Public Works. The total cost of this study is estimated to be approximately \$500,000.
23. The applicants propose to locate within the PUD a child care center comprising approximately 2,530 square feet. The applicants testified that they will provide the space free of charge and will spend an estimated \$100,000 to prepare the space. The rent concession is worth approximately \$42,900 per year. The applicants also stated that they would be willing to structure the center so that the child care population will be split evenly between project tenants and the neighborhood families.
24. The applicants, through expert witnesses and consultants, further contends that:
- a. Ingress to the Abrams site would be between the Donohoe and Miller properties on Wisconsin Avenue, from Military Road or from Jenifer Street. Egress from the site would be from Jenifer Street. The architect stated that truck traffic could only enter from Military Road and exit onto Jenifer Street;
 - b. The through-block connector will occupy 22 percent of the ground level site; that the design of the through-block connector was the result of coordinated efforts with the two other developers of Square 1661;
 - c. The materials and colors were chosen to be compatible with the other developments in the square as well as the residential neighborhood on 43rd Street. The first two stories of the building will be predominantly granite, in a rose tone, a combination of polished and flamestruck materials. Inlays of granite, both flame and polished, have been included in the granite aggregate which sheaths the bulk of the building. The glass will be solar grey, nonreflective, and allow visibility into and out of the building. On the residential portion, the building materials will be brick masonry of two reddish tones which will be complimentary to the residences across the street;
 - d. The landscaping and streetscape of the project will be substantial street trees and seasonal plantings in front of the residential component of

the development and traffic diverter at 43rd and Jenifer Streets, upgraded materials on the paving as well as a continuation of the paving patterns established on the Donohoe and Miller sites and a streetscape articulation that relates to the building form and design;

- e. The child care center would be used 50 percent by members of the neighborhood, who would be walking to the Metro or carpooling, and 50 percent by employees of the proposed development even if the Internal Revenue Service places a restriction on the operation of the child care center. The center would, therefore, have a minimum impact on traffic.
- f. The proposed Abrams development is expected to generate 115 inbound vehicle trips during the a.m. peak hour (or 131 two way trips inbound and outbound traffic combined), and 135 outbound vehicle trips during the p.m. peak hour (or 192 two way trips inbound and outbound). Traffic generated by the Abrams site when compared with the development of the entire Square 1661 represents 15 percent of the total square traffic in the a.m. peak hour and 14 percent of the total square traffic in the p.m. peak hour. That is, the net increase in trips associated with the proposed project is further reduced by approximately 25 percent;
- g. Traffic exiting from the Abrams parking areas would exit via the truck connector and out onto westbound Jenifer Street. There would be no conflict with truck movements because of a truck management plan that would ban truck access to the through-block connector at Military Road during peak hours. During off peak hours there would be proper controls to enable trucks and automobiles to interface safely and effectively. Vehicles entering the Abrams site would do so from Jenifer Street travelling northbound and make a left turn into the entrance of the parking area. There would be two ingress lanes to the square. The left would be for Abrams parking which would be downgrade into the parking control and continuing in a circular direction to the main level of parking. The right lane of the two-lane drive off of Jenifer would lead into the Miller site; and
- h. Participation in a traffic mitigation program consisting of: (1) funding road improvements recommended by the Department of Public Works, (2) a study of existing neighborhood conditions, (3) a

follow-up study after 40 percent of the buildings in Square 1661 are occupied to determine what further actions are needed, and (4) a \$250,000 implementation improvement program.

25. The applicants filed in the record an executed agreement with the Minority Business Opportunity Commission (MBOC) evidencing their commitment to make a bona fide effort to utilize certified minority business enterprises for a minimum of 35 percent of the contracted development costs. The applicants also filed in the record an executed agreement with the Department of Employment Services as evidence of its commitment to use Department of Employment Services as its first source for recruitment, referral, and placement of new hires or employees whose jobs are created by the PUD project, for a minimum 50 percent D.C. residents.
26. The District of Columbia Office of Planning (OP), by memorandum dated June 30, 1986, and by testimony presented at the public hearing, recommended approval of the application subject to proposed development guidelines, conditions and standards, as detailed in the OP summary/abstract memorandum dated October 29, 1986.
27. The District of Columbia Department of Public Works (DPW), by memorandum dated July 1, 1986, and by testimony presented at the public hearing, indicated that the proposed development would generate an additional 54 inbound vehicle trips and 181 outbound for a total of 235 vehicle trips during a typical p.m. peak hour. DPW indicated that these additional trips would not significantly affect the level of service measures which were analyzed for the entire square. The level of service measures indicate that northbound Wisconsin Avenue would operate at level of service C, compared to the level of service E+ previously stated in the DPW report on the Donohoe PUD; that southbound left turning movements would operate at level of service D compared to the level of service F as stated in the Donohoe PUD report and all other approaches (Military Road and Western Avenue) would operate at level of service C or better. The improvements in capacity and level of service were achieved through the combination of physical road improvements on adjacent streets and the internal reallocation of the signal timing at this intersection. The improvements are to be provided by the applicants and the other developers of Square 1661 at no cost to the District of Columbia.
28. The DPW stated that the applicants proposed to provide three loading berths, compared to the four required under the Zoning Regulations. Three loading berths

appear to be adequate to accommodate the project since this is a mixed-use development. DPW further recommended that the two required service/delivery spaces be provided.

29. DPW testified that there is adequate capacity with regard to water and sewer services for the project. However, if a storm sewer is needed on Wisconsin Avenue, the existing system would have to be extended.
30. DPW noted that Abrams and Associates, the Donohoe Company and the Miller Companies, have committed themselves to a transportation management program to enhance transit ridership, increase car occupancy rates and encourage van pooling. The DPW recommends that the applicants develop a ridesharing program.
31. The District of Columbia Department of Recreation (DOR), by memorandum dated June 9, 1986, supports the PUD application.
32. The District of Columbia Metropolitan Police Department, by written submission dated June 26, 1986, indicated that the proposed development is not expected to generate any substantial increases in the need for police services and that the Department is adequately prepared to provide the level of protection necessary to offer continued safety to the property and residents of the community.
33. The District of Columbia Fire Department, by memorandum dated June 30, 1986, stated that the PUD would not adversely affect the operations of the Fire Department provided certain requirements are met. It requested that all buildings constructed have an automatic sprinkler system installed and that fast response residential sprinkler heads be installed in all dwelling units in the development.
34. The District of Columbia Department of Consumer and Regulatory Affairs (DCRA), by memorandum dated July 1, 1986, reported that the applicants must prepare a sediment and erosion control plan, and landscape plan for review and approval before the issuance of a building permit.
35. The Donohoe Companies, Inc., the developer of property to the north of the subject site within Square 1661 and a party in the proceeding, by letter dated June 26, 1986, and by testimony presented at the public hearing, supported the application.
36. The Miller Companies, contract purchaser of the

adjacent property to the north of the PUD site and party in the proceeding, by testimony presented at the public hearing, supports the application.

37. Advisory Neighborhood Commission 3E (ANC), a party in the proceeding, by letter dated June 25, 1986, and by testimony presented at the public hearing opposed the application. The concerns of the ANC are as follows:
 - a. The proposed lot occupancy, gross floor area, and FAR are excessive, given the type of commercial occupancy which has been proposed. ANC 3E contends that an FAR greater than 4.2 would cause destructive harm to the arterial and neighborhood street traffic situation which is already subject to stress and congestion;
 - b. ANC 3E conditions any support of a specific proposal upon completion of a comprehensive traffic study taking into account all pertinent on-site and off-site developments. ANC 3E believes that the traffic information submitted is inadequate in this regard. It further noted that it believes that the 40 percent modal split used in applicants' traffic analysis was too high;
 - c. The proposed day care center operation presents unacceptable safety hazards to its children because of (i) inadequate indoor play space, (ii) plans to permit children to play on sidewalks adjacent to busy streets and the garage entrance/exit, (iii) plans to take children to the Chevy Chase playground for recreation, requiring a journey on foot of one-half mile across busy intersections and along Western Avenue which is a busy arterial, and (iv) liability issues in connection with use by the day care facility of a public park;
 - d. ANC-3E opposes the application because it believes a one-step consolidated PUD application is inappropriate for the reasons that an adequate traffic study has not been completed and there are safety hazards in connection with the child care center; and
 - e. ANC 3E believes that the child care center is an amenity.
38. Advisory Neighborhood Commission (ANC) 3G, a party in the proceeding, by letter dated June 11, 1986, and by testimony presented at the public hearing, opposed the application. The concerns of ANC 3G are the following:

- a. The development should not exceed a 4.2 FAR, which is 40 percent higher than that of Mazza Gallerie;
 - b. The residential area bounded by 41st Street, Military Road, Connecticut and Western Avenues will be severely impacted by the Abrams proposal and other Square 1661 developments;
 - c. The proposed development will lead to pressures for further "upzoning" at Friendship Heights, such as the present site of the Chevy Chase shopping center;
 - d. Densities for office space should be reduced as there is a regional glut of office space, in fact, the Chevy Chase Metro center across Western Avenue which has been open for about 15 months is almost vacant; and
 - e. The through-block connector is a plus and the child care facility is a needed community amenity. There is no criticism of the architecture and design of the proposed project.
39. The Citizens Coordinating Committee for Friendship Heights (CCCFH), party in the proceeding by written submissions and by testimony presented at the public hearing, opposed the application. The concerns of the CCFH are as follows:
- a. The need for and lack of coordination with other proposed development on the same square including the areas of aesthetics and traffic circulation;
 - b. The need for and lack of coordination with existing and proposed development in Friendship Heights on the District side of the line;
 - c. The need for and lack of coordination with existing and proposed development in Friendship Heights of the Maryland side of the line;
 - d. The inadequacy of pedestrian circulation, including adequacy of sidewalks;
 - e. The inadequacy of automobile parking and circulation internally and externally to the square;
 - f. The inadequacy of service vehicle parking, loading and circulation, including vans, taxis and buses;
 - g. The inadequacy of public amenities including the

- open space and the day care center;
- h. Detrimental effects of the PUD on nearby residential areas and the businesses in Maryland and the District;
 - i. The invalidity of certain assumptions underlying the applicants' traffic analysis and proposals;
 - j. The inadequacy of access to Metro and Metrobus;
 - k. The absence of adjacent outdoor play area to the day care center;
 - l. The health hazards connected with air pollution in the through-block connector; and
 - m. The loss of business that will result to Mazza Gallerie store owners if Wisconsin Avenue is widened.
40. The Citizens Coordination Committee for Friendship Heights (CCFH), by testimony presented at the public hearing expressed concern that street improvements should be in place, or underway, before any building permits are issued.
41. As to the concern of the CCFH regarding street improvements, the Commission finds that the Department of Public Works is the appropriate agency to review and decide on plans for widening Wisconsin Avenue and for other street improvements. The Commission defers to the technical expertise of DPW on this matter.
42. The Friendship Neighborhood Coalition (FNC), a party in the proceeding by written submissions and by testimony presented at the public hearing, opposed the application as presented, and commented as follows:
- a. The proposed height, bulk and density of the development are excessive in that they exceed what would be permitted under existing zoning. The proposed FAR of 5.5 exceeds that of the other two projects;
 - b. The proposed development, in conjunction with similar additional development in Square 1661 and elsewhere along Wisconsin Avenue, will strangle traffic flow during peak periods at the crucial intersection of Wisconsin and Western Avenues and will have a serious impact on neighborhood streets. Even with the improvements DPW now contemplates, there is a limited capacity for additional traffic on the existing roadway system;

- c. The developers' commitment to support at least the level of mitigation proposed by DPW must be assured;
- d. It is vital to assure that 43rd Street remains residential. Residential zoning along all of 43rd Street should be maintained. The Abrams 43rd Street frontage should be designed to be compatible with the single family houses across the street and with the adjacent Miller residential units;
- e. 43rd Street should be protected from commercial traffic generated by the Abrams main entrance on Jenifer Street;
- f. The design of the through-block connector needs further consideration;
- g. The amenities proposed by the applicants are inadequate to justify the significant increase in size and density that has been requested;
- h. Applicants' amenities are only aspects of the project which owe their existence to the economic realities of competitive development, are necessary to partially alleviate the upcoming traffic disaster, are mandated by the Commission or the Zoning Regulations, or are mandated by the Land Use Element of the Comprehensive Plan. In place of these a genuine amenity, reduction in size and density, should be required;
- i. The applicants have not coordinated the residential design with the adjacent development;
- j. There is not enough of a residential component to the project;
- k. A PUD under current zoning is ignored by Abrams in its economic analysis;
- l. The DPW study must be completed and taken into consideration before any final decisions are made on this square;
- m. Signalization for safe pedestrian crossings has not been adequately considered by the applicants;
- n. The design of the proposed building does not provide an adequate transition to the buildings to the south;
- o. The proposed child care center should be required

to reserve some spaces for use by the neighborhood;

- p. The developer should be required to have someone to greet the children, and not use the sidewalk area for play space;
 - q. The developer should consider alternative routes for trucks during the construction period; and
 - r. The developer should designate someone as a contact person once the project is complete.
43. The Friendship Neighborhood Coalition (FNC), by testimony presented at the public hearing, stated that the redesign of the residential project is preferable to the previous design. The FNC also testified that the plans for the traffic diverter are good, but that there is still a concern about pedestrian safety.
44. As to the concern of the FNC regarding pedestrian safety at the diverter on 43rd and Jenifer Streets, the Commission finds that the proposed diverter is sufficient to ensure safety.
45. Imelda Prokopovitch, party in the proceeding, by written submission and by testimony presented at the public hearing, opposed the application. She stated that the proposed route for construction trucks in connection with the proposed development should be rerouted from the 5100 and 5200 blocks of Western Avenue and the 4600 through 4800 blocks of River Road because of severe property damage that has been caused from the vibrations created when heavy trucks and buses pass and accelerate on these roads.
46. Imelda Prokopovitch, by written submission and by testimony presented at the public hearing stated that the terms "construction" and "building" were used loosely in the Memorandum of Understanding and recommended that they be clarified.
47. As to the concern of Mrs. Prokopovitch regarding the Memorandum of Understanding, the Commission finds that the DPW is the proper agency to address these concerns.
48. As to the concern of ANC 3E, the FNC, the CCCFH and other parties and persons regarding the density of the development, the Commission concurs with the testimony of the applicants' architect and economic consultant that the proposed development is consistent with the bulk and size of other approved development in the square and is not intrusive into the adjoining residential area to the east.

49. As to the concern of the DPW, ANC 3E and other parties and persons regarding traffic, the Commission finds persuasive the testimony and analysis of DPW and the applicants' traffic consultant. The Commission further finds that the traffic mitigation plan proposed by the developers is appropriate and that such studies and improvements should be funded by the applicants and other developers in the square in accordance with the developers' agreement.
50. As to the concern of ANC 3E and other parties and persons regarding pedestrian safety along Wisconsin Avenue, the Commission finds that in its decision it has addressed the matter, and that the proposed pedestrian passageways and signalization improvements are sufficient to insure safety.
51. As to the concern of ANC 3E, the CCCFH, the FNC and other parties and persons regarding the proposed child care facility, the Commission finds that the center is desirable, is needed in the area, will serve both the community and the proposed development and will not have an adverse impact on traffic.
52. As to the concern of Mrs. Prokopovitch, the FNC and other parties and persons regarding alternate routes for trucks during the construction period, the Commission is mindful of its responsibility to regulate land use in the District of Columbia and finds that the designation of construction truck routes is not within the controls of zoning or enforceable through zoning.
53. As to the concern of ANC 3G, the FNC and other parties and persons regarding the mandating of residential zoning along the 43rd Street frontage, the Commission finds that in approving the applicants' proposed plans, the residential component of such plans would be fixed. The Commission therefore finds that approval of the applicants' plan would include approval of the residential strip from the public alley west to 43rd street east of the site, to be zoned R-5-C, thus insuring that the area along 43rd Street would be for residential use.
54. As to the concern of the CCCFH and other parties and persons regarding the loss of business in the Mazza Gallerie if Wisconsin Avenue is widened, the Commission finds that competition is not an appropriate basis for a zoning decision. The Commission further finds that an appropriate sidewalk and streetscape treatment can be provided within the public right-of-way of Wisconsin Avenue.
55. As to the concern of ANC 3E and other parties and

persons regarding the appropriateness of a consolidated PUD application, the Commission finds it has addressed all of the necessary issues and that, specifically, an adequate traffic study has been completed by the applicants and that the proposed child care program and center poses no safety hazards which would necessitate further review.

56. As to the concern of CCCFH regarding the adequacy of circulation and parking, the Commission is persuaded that circulation within the proposed development has been coordinated between the three developers and will effect a safe means of circulation for both pedestrians and vehicles and will provide easy access to the Metro Station and to Metrobus. The Commission agrees with the DPW that the project provides adequate parking.
57. As to the concern of CCCFH and other parties and persons regarding the health hazards connected with air pollution in the through-block connector, the Commission finds that the venting system described by the applicants will effectively minimize any pollution in the through-block connector.
58. As to the concern of CCCFH with regard to coordination of the proposed development with other existing and proposed development, the Commission finds applicants have coordinated its development plans with other developers in the square as well as in the area.
59. As to the concern expressed by ANC 3G and other parties and persons regarding pressures for further "upzoning", the Commission finds that the area has been underdeveloped for 25 years and that the subject site, which is designated by the Comprehensive Plan as part of a Regional Center and a Development Opportunity area as well as being in close proximity to the Metro system, is appropriate for the proposed development. The Commission further finds that each application must be judged on its own merit, and approval of the subject application in this square sets no precedent for development in any other site or any other square.
60. As to the concern expressed by FNC regarding signalization, the Commission finds that the applicants' traffic mitigation program contains plans for safe pedestrian movement.
61. As to the concern expressed by the FNC regarding parking spaces for the residential units, the Commission finds that in its decision, it has addressed the matter.
62. The Commission finds that issues raised by persons in

opposition were previously raised by parties in opposition.

63. The Commission finds that no persons testified at the public hearing in support.
64. The Commission finds that subsequent to mediation activities between the applicant, community and parties to the case, by written submissions and by testimony at the public hearing of October 9, 1986, parties are supportive of the application as articulated in the applicants motion for reconsideration of proposed action by the Zoning Commission and Memorandum of Agreement, marked as Exhibit No. 168 of the record. Those parties are the FNC, ANC 3E, ANC 3G and CCCFH.
65. The Commission finds that the parties, cited above that are now in support, and the applicants have made an impressive effort to resolve differences and the Commission believes that consideration of the applicant's motion is efficient, expeditious and a reasonable way to complete the processing of this case.
66. The Commission finds that the modifications requested and agreed to between the applicants and parties do not significantly change the nature and scope of the project.
67. The Commission finds that Square 1661 should be developed and that the PUD process offers an effective means by which planning and development objectives can be achieved on the square.
68. The Commission finds the proposed uses including office, retail, housing and the child care center to be appropriate for the site. The Commission finds that the introduction of the housing element on the site is not inconsistent with the Comprehensive Plan Land Element for the National Capital.
69. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-government and Governmental Reorganization Act. The NCPC, by report dated February 5, 1987 found that the application would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate

means of controlling development of the subject site, because control of the use and site plan is essential to ensure compatibility with the neighborhood.

2. The development of this PUD carries out the purpose of Chapter 24 to encourage the development of well planned residential, institutional, commercial and mixed use developments which will offer a variety of building types with more attractive and efficient planning, and design not achievable under matter-of-right.
3. The development of this PUD is compatible with city-wide goals, plans and programs, and is sensitive to environmental protection and energy conservation.
4. Approval of this application is not inconsistent with the Comprehensive Plan for the National Capital.
5. Approval of this PUD application is consistent with the purposes of the Zoning Act.
6. The proposed application can be approved with conditions which ensure that the development will not have an adverse effect on the surrounding community, but will enhance the neighborhood and ensure neighborhood stability.
7. The approval of this application will promote orderly development in conformity with the entirety of the District of Columbia Zone Plan as embodied in the Zoning Regulations and Map of the District of Columbia.
8. The Zoning Commission has accorded to the Advisory Neighborhood Commission 3E the "great weight" to which it is entitled.

DECISION

In consideration of the Findings of Fact and Conclusion of Law herein, the District of Columbia Zoning Commission hereby orders APPROVAL of the application for consolidated review of a planned unit development and related map amendment from R-5-B and C-2-B to R-5-C and C-3-B for Lots 11, 12, 13, 16 and 802 and public alleys to be closed in Square 1661. The approval is subject to the following guidelines, conditions and standards:

1. The planned unit development (PUD) shall be developed in accordance with the plans prepared by Weihe, Black, Jeffries, Strassman and Dove marked as Exhibits No. 33, 152, and 168, as modified by the guidelines, conditions and standards of this Order.
2. The PUD shall be a mixed-use project consisting

of general office and retail components, and a residential component, including a childcare facility, and excluding any use for any professional office, e.g., doctors, dentists, attorneys, and other professions.

3. The PUD shall have direct pedestrian access passageway to the Friendship Metrorail Station through adjacent developments, and shall have an underground parking garage.
4. The final design of the project shall be based upon the plans marked as Exhibit No. 33, as revised by Exhibits No. 152 and 168 of the record, and modified to conform to the guidelines, conditions, and standards of this Order.
5. The project shall be developed under the C-3-B and the R-5-C Zone District provisions of the Zoning Regulations. The area of the site containing the residential component of the project shall be rezoned to R-5-C, beginning from 43rd Street on the east, the office/retail component of the PUD on the west, the north property line of the PUD, and Jenifer Street on the south. This shall not preclude the applicants from using the sub-surface levels of the residential portion of the property for commercial and parking use. The remainder of the site shall be rezoned to C-3-B.
6. The floor area ratio (FAR) of the project shall not exceed 5.15 with no more than 4.90 FAR devoted to commercial uses and no more than .25 FAR devoted to residential uses and a childcare facility. The covered loading area and through block connector shall not count against the FAR limitation.
7. The lot occupancy of the project shall not exceed 95 percent of the site, exclusive of the covered loading through block connector.
8. The height of the PUD shall not exceed ninety feet along Wisconsin Avenue, nor two stories along 43rd Street, with the setbacks as shown on Exhibits No. 33, 152, and 168 of the record.
9. There shall be no vehicular access to or from the subject site on 43rd Street, except by occupants or visitors to the residential component of the project.
10. Landscaping and paving shall be in accordance with the landscaping and streetscape as shown on the plans marked as Exhibits No. 33, 152, 160, and 168 of the record.

11. The applicant shall coordinate with the other owners in Square 1661 to develop a single unified plan for vehicular circulation as a through square connector within Square 1661, as shown on Exhibits No. 152 and 168 of the record, or any such amended unified vehicular circulation plan as the Commission may approve in any other planned unit development for Square 1661. The through square connector shall include: (a) parking and loading; (b) entrances and exits off of Wisconsin Avenue, Military Road and Jenifer Street; (c) internal vehicular circulation; and (d) internal and external signage.
12. The applicant shall provide not less than 248 parking spaces. The applicant shall also provide at least one fully accessible parking space with each apartment unit. Such parking space shall only be used by the owner or occupant of the apartment and not for commercial use. The contract of the parking space shall prohibit later rental or separate conveyance of the parking space.
13. The child care facility shall be organized as a non-profit organization pursuant to the provisions of the Internal Revenue Code and operated so that enrollment is open to children of employees of the projects in Square 1661 and to children of community residents on an equal basis with the goal of achieving a 50-50 ratio between the two groups. If the child care facility must make an organizational or other change to maintain its non-profit status, the child care facility will continue to promote the 50-50 mix between neighborhood children and children of employees of the projects with the goal of ensuring that neighborhood children participate in the child care facility on an equal or preferred basis with children of employees.
14. In the event that the child care facility fails to operate, the applicant shall re-convert the space to residential use, excluding any use for any professional office, e.g., doctors, dentists, attorneys, and other professions.
15. Three parking spaces shall be reserved for staff of the day care facility, in accordance with Zoning Regulations, or in the alternative added to the residential component should the day care facility cease to exist.
16. Six bicycle spaces shall be provided, as required by the Zoning Regulations.
17. Parking for office and retail uses shall be provided as proposed in the plan marked as Exhibits No. 33 and 168 of the record. After construction of the project is

completed, there shall be no vehicular access to or from 43rd Street.

18. The parking garage shall have the potential for a connection to the adjacent properties in at least one location below grade, as shown on the plan marked as Exhibits No. 33 and 168 of the record. Additionally, the applicant has the flexibility to modify its parking garage plan to provide additional connections to the adjacent property in order to facilitate vehicular and pedestrian circulation.
19. Truck loading activity for the PUD site shall be in accordance with the truck management plan generally described in the record of the case and marked as Exhibit No. 98. Specifically, there shall be no loading activity, including arrivals, departures, or maneuverings, at the PUD loading facility from 7:00 A.M. to 9:00 A.M. or from 4:30 P.M. to 6:00 P.M.
20. The truck route for disposal of excavated materials shall not include Western Avenue, between Wisconsin Avenue and River Road, unless no other route is available.
21. Construction work may not commence earlier than 7:00 A.M. The termination of construction shall be in conformance with District of Columbia regulations.
22. The applicant shall coordinate its construction schedule with the Department of Public Works to minimize any impact from the proposed reconstruction of Military Road.
23. During the construction of the PUD, the applicant may use 43rd Street for construction purposes. The applicant is encouraged to coordinate its construction scheduled with the adjacent property owners so as to provide to the extent possible coordinated staging of construction vehicles. Additionally, the applicant is to appoint an ombudsman to work with the community throughout the construction of the project.
24. An ombudsman must be available during daytime, evening, and weekend hours during construction, and during subsequent operation.
25. The applicant will coordinate with other property owners in the square concerning graphics for the through block connector, signage for the parking garages and architectural treatment of a through block connector.
26. The applicant shall implement the agreement with the

Department of Employment Services filed in the record as Exhibit No. 70.

27. The applicant shall implement the Memorandum of Understanding with the Minority Business Opportunity Commission filed in the record as Exhibit No. 71.
28. The project shall include a comprehensive transportation management program to reduce single occupant vehicles accessing the site and to encourage maximum usage of the Friendship Heights Metro station. This program will include the components described in the plan filed in the record as Exhibit No. 152(G). The applicant will work with the District of Columbia's Rideshare Coordinator and other developers in the square in the implementation and enforcement of this program.
29. The project shall include the amenities package proposed as part of this application, as described in Findings No. 21, 22, and 23 of this Order, excluding any plantings on the residential component, consistent with plans marked Exhibit No. 168 of the record.
30. The proposed garage for the PUD site will include a lighted sign which designates, at the garage entrance, whether the garage is full.
31. The venting of the garage shall be conducted in full compliance with all applicable District of Columbia Code requirements. In compliance with those requirements, the venting shall be located at a minimum height of 20 feet above grade, and shall be so designed as not to affect any adjacent residential use or any public amenity space.
32. Prior to the application for a building permit, the applicants shall enter into an agreement with the Department of Public Works (DPW) to provide for a pro rata share of the funding and implementation of the following:
 - a. Implementation of the street and road improvements as described in paragraph 2b of the DPW report dated March 28, 1986 and marked as Exhibits No. 102 and 147 of Z.C. Cases 85-16F/84-20P and 85-9P, respectively.
 - b. A further study of present and future area traffic, including construction vehicles, as described in Paragraph 2c of the DPW report dated March 28, 1986 and marked as Exhibits No. 102 and 147 of Z.C. Cases 85-16F/84-20P and 85-9P, respectively. The study area boundaries are to

include but not be limited to Western Avenue on the north, 41st Street and Reno Road on the east, Fessenden Street on the south, and River Road and Western Avenue on the west.

The applicants shall share with the other developers in Square 1661 the cost of this program, and the area street and road improvements.

33. Pedestrian circulation through the project shall be provided as shown on the plan marked as Exhibits No. 33 and 168 of the record.
34. The facade design treatment and materials of the proposed building shall be generally consistent with the plans marked as part of Exhibit No. 33 and as further described on Exhibits No. 120, 152, and 168 filed in the record of the case. The final selection of exterior and interior materials shall be within the color range of the stones as proposed. If the applicant determines that it is reasonably necessary to use a color which is not within the proposed color range, the applicant shall file with the Commission, and serve on all parties, a request for an appropriate amendment of this condition. After allowing all parties a reasonable opportunity to present written comments on the request, the Commission may dispose of the request without further hearing.
35. The design of the residential apartments shall be based upon the revised plan marked as Exhibit No. 168 of the record.
36. The design of the Wisconsin Avenue facade of the project shall be based upon the original plan which is marked as Exhibits No. 33 and 168 of the record.
37. The applicants may vary the location and design of all interior components of the commercial building including additional or reconfigured position of vertical transportation as necessary to comply to all applicable codes or as required to obtain a final building permit.
38. Signage for the proposed project shall be in accordance with the signage criteria filed in the record and marked as Exhibits No. 74 and 98.
39. Thirty days after completion of construction of the underground parking facility, through block connector, and its roofing and venting, the applicant shall use the connector as such, and shall not use it for any other purpose.
40. The applicants and other owners in Square 1661 have the

flexibility to resolve any problems which may result from coordination, construction and implementation of the through-block connector.

41. Landscaping proposed for the project shall be in accordance with Exhibits No. 33, 74, and 168 of the record. All structural and landscaping maintenance is the responsibility of the applicant.
42. The applicants shall implement the management plan for the roof top plantings, as detailed in Exhibits No. 152, 160 and 168 of the record.
43. The applicants shall provide space for non-destination retail service uses as detailed in Exhibit No. 152 of the record.
44. The applicants shall renovate the traffic diverter located at 43rd and Jenifer Streets, N.W. as described in Exhibit No. 160 in the case, and shall thereafter maintain the diverter.
45. The applicants shall use the revised plans for Jenifer Street as detailed in Exhibit No. 160 of the record.
46. The applicants shall have adjustment flexibility in resolving problems which may stem from construction elements which physically relate to the Miller Company project, to ensure final proper calibration.
47. The change of zoning from R-5-B and C-2-B to R-5-C and C-3-B shall be effective upon recordation of a covenant as required by Section 2407 of the Zoning Regulations. The residential zone change shall be in accordance with Finding No. 53.
48. No building permit shall be issued for this planned unit development until the applicant has recorded a covenant in the Land Records of the District of Columbia, between the owner and the District of Columbia and satisfactory to the Office of the Corporation Counsel and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs (DCRA), which covenant shall bind the applicant and successors in title to construct on and use this property in accordance with this order, or amendments thereof, of the Zoning Commission.
49. The Zoning Secretariat shall not release the record of this case to the Zoning Regulations Division/DCRA until the applicant has filed a certified copy of the covenant with the records of the Zoning Commission.
50. The planned unit development approved by the Zoning

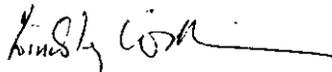
Commission shall be valid for a period of 2 years from the effective date of this order. Within such time, application must be filed for a building permit, as specified in Subsections 2407.2 and 2407.3 of the Zoning Regulations. Construction shall start within 3 years of the effective date of this order.

Vote of the Zoning Commission taken at the public meeting on November 3, 1986: 5-0 (Commissioners Mathews, Williams, White, Parsons and Bennett, to approve with conditions).

The conditions of this Order were approved by the Commission at its public meeting on January 12, 1987 by a vote of 5-0 (Commissioners Mathews, Williams, White, Parsons and Bennett, to approve as amended).

Order No. 519 was adopted by the Commission at its public meeting on February 9, 1987, by a vote of 5-0 (Commissioners Parsons, Mathews, White, Williams and Bennett, to adopt as amended).

In accordance with 11 DCMR Section 3028, this Order is final and effective upon publication in the D.C. Register, that is on 03 APR 1987.



LINDSLEY WILLIAMS
Chairman
Zoning Commission



EDWARD L. CURRY
Acting Executive Director
Zoning Secretariat