

**Government of the District of Columbia**  
**ZONING COMMISSION**



**ZONING COMMISSION ORDER NO. 841**  
**Case No. 97-10C**  
**(Consolidated PUD - Oxon Creek @ Savannah Street, S.E.)**  
**May 11, 1998**

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on November 24, 1997, to consider an application from the law firm of Jordan and Keys, L.L.P. on behalf of Parklands, Inc. and the Oxon Creek L.L.C. for consolidated review and approval of a planned unit development (PUD), pursuant to Chapter 24 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was considered in accordance with the provisions of 11 DCMR Subsection 3022.

**FINDINGS OF FACT**

1. On July 1, 1997, the applicant filed a application for consolidated review and approval of a planned unit development for property located at Savannah Street between 19<sup>th</sup> and 21<sup>st</sup> Streets, S.E. The property consists of all or portions of 41 lots located within squares 5898, 5899 and 5900.
2. The PUD site is jointly owned by the applicants, Park-lands, Inc. and the Oxon Creek, L.L.C. The site consists of approximately 15.1433 acres, or 659,644 square feet. It is bounded by Mississippi Avenue, S.E. on the south, 19<sup>th</sup> Street, S.E. on the east, Savannah Street on the north, and 21<sup>st</sup> Street on the west and comprises of all of lots 1-15 in Square 5899, lots 4-12 in Square 5898, lots 1-3 and 10-17 in Square 5900 including portions of lots 4-9 in Square 5900. The site has a steep slope of 115 feet along Savannah Street and the wooded area at the southern end of the site.
3. The entire site is zoned R-5-A. The site was occupied by 34 vacant, 12-unit apartments building for which demolition permits were obtained and the buildings demolished in readiness for the applicants proposed PUD.

4. The R-5-A district permits matter-of-right single family detached dwellings, and with the approval of the Board of Zoning Adjustment, low density development of residential uses including rowhouses, flats, and apartments to a maximum floor area ratio (FAR) of 0.9, and a maximum height of 3 stories, or 40 feet.
5. The applicants propose to construct a new road (Tremont Place) to run parallel to Mississippi Avenue and to develop the site with 210 townhomes for low and moderate-income families. The project would be constructed in phases. When completed the PUD would have a height of about 40 feet, a floor area ratio (FAR) of .56, a lot occupancy of 23 percent and provide 361 residential parking spaces.
6. At the public hearing, the applicants testified that they own and operate the Villages of Parklands, including the Splash Park, a \$1 million water recreation facility directly to the north of the proposed PUD site.
7. The applicants stated that they have received a \$3 million loan from the District of Columbia Department of Housing and Community Development through the HOME Investment Partnership Program of the United States Department of Housing and Urban Development and in accordance with the regulations set forth at 24 CFR Part 92 (HOME Program). The HOME Program restricts the use of its funds to low and moderate income persons. In this instance, the applicants intend to make available 95 percent of the townhomes to low and moderate income purchasers. The applicants have recorded a covenant and a deed of trust encumbering the subject property and committing themselves to develop the property in accordance with the HOME Program restrictions.
8. The subject site has dramatic topographic features, including a grade change of 115 feet sloping down in two stages from Savannah Street at the northern end of the site, to Mississippi Avenue at the southern end of the site. The steepest drop off occur in two areas: the first is in between the Splash Park along Savannah Street and Tremont Place; the other is in the wooded area at the southern end of the site. Because of these severe grade changes, portions of the property are not economically feasible for building and in the applicant's proposed site plan these locations have been left in their natural states.
9. The topographical conditions on the site dictate the placement of the buildings, the requirement for the new public street (tentatively denominated as Tremont Place, S.E.) and the storm

water drainage system, water catchment and other environmental infrastructure elements of the site.

10. The applicants intend to erect three types of townhomes: (1) fifty-two (52) 3-story, 1,500 square foot, 2-bedroom, 1-1/2 bath unit with or without a garage; (2) one hundred four (104) 3-story, 1,800 square foot, 3-bedroom, 1-1/2 bath unit, with or without a garage; and (3) fifty-four (54) 3-story, 1,920 square foot, 3-bedroom, 2-1/2 bath unit with family room and garage.
11. The applicants' site plan calls for the construction of one new road (to be built to the specifications of the District of Columbia Public Works and to be dedicated as a new public street) to run between 19th and 21st Streets, S.E., parallel to Mississippi Avenue, and having the proposed name of Tremont Place. The new road is sited as it is due to the extreme slope of the land above it and the relative flatness of the area that the new road traverses. The placement of the new road creates a concentration of smaller lots for the units located between Tremont Place and Trenton Place. In this newly created block, the units on the northern half of the block almost meet the R-5-A minimum lot area of 1,700 square feet. The lots on the southern half of the block, however are slightly smaller and average approximately 1,400 square feet.
12. The site plan calls for the creation of two private drives: the first, off 21st Street, S.E. on the eastern edge of the subject property, and the other private drive will occur at the northern end of the site connecting Savannah and 21st Streets, S.E.
13. The project will provide a total of 361 residential parking spaces, which are either located in the garages contained within the townhomes (169 garage units) or in on street parking spaces. One-hundred and ninety-two (192) of the parking spaces will be for resident and guest parking. The remaining 169 parking spaces will be contained within the townhouse.
14. The applicants' traffic expert testified that even at one automobile per unit (which is a level of automobile ownership higher than typical in the surrounding community) there is a surplus of 151 parking spaces for visitors and guests.
15. The applicants intended to preserve many of the mature street trees lining the street within the project area, removing only six (6) trees. The applicants will undertake a tree planting effort on the existing streets and the new street using four

inch caliper Pin Oaks and London plane trees consistent with the existing tree pattern for the area. Additional ornamental trees will be placed in the crescent area of the private street off of 21st Street, SE, and in the entrance/gateway areas of the project. The landscape design also includes wrought iron fencing as a signature element of the project and special lighting along the internal pathway connecting the new street with Trenton Place, S.E. and within the crescent area off 21st Street, S.E.

16. The Applicants propose to develop and install a new storm-water drainage system for the new public street and the townhomes. Additionally, the applicant will take advantage of natural grades of the site to divert stormwater runoff to two specially-designed and landscaped catchment areas which will function as bio-retention filters. This innovative, passive water quality system will meet applicable city standards.
17. The Applicants offered the following public benefits and amenities as a result of the approval of this PUD project:
  - (a) significant home ownership opportunities for low and moderate income persons;
  - (b) reduction of overall density in the Villages of Parklands;
  - (c) retention of District of Columbia residents who previously had no chance to purchase comparable housing within the city;
  - (d) preservation of significant open space as a visual and recreational amenity; and
  - (e) a varied streetscape with mature trees and an affordable architectural product with a variety of colors, styles and optional amenities.
18. The District of Columbia Office of Planning (OP), by memorandum filed November 14, 1997 (final report), recommended conditional approval of the application. OP concluded that the application had sufficient merit for approval and was necessitated by the number of nonconforming lots caused by topography and the existing street system. OP noted that the proposed density and lot occupancy are far lower than would be allowed as a matter-of-right in the R-5-A zone district and recognized the high value of additional home-ownership opportunities for this particular community. The single

concern expressed in the OP report concerned the compatibility of the proposed units with the surrounding apartment buildings which is all brick construction. In the opinion of OP, the Applicant should be required to ensure either that 50% of all townhouse have a first story front brick facade or that 20% of all townhomes have a full front brick facade.

19. Duryea Smith, a representative of the District of Columbia Department of Housing and Community Development (DHCD) testified in support of the PUD application. DHCD expressed confidence in the Applicants' plans and potential for creating new housing opportunities for low and moderate income residents of the District. In addition to the \$3 million loan under the HOME Program, DHCD also intended to provide the Applicants with bridge loan financing to carry the project through construction.
19. No parties or persons appeared in opposition to the PUD application.
20. Advisory Neighborhood Commission (ANC)-8B did not submit any comments for the record or participate in the public hearing proceedings. However, Single Member Advisory Neighborhood Commissioner (SMANC)8b-01, by letter dated October 16, 1998 supported the project.
22. At the conclusion of the public hearing, the Commission requested that the Applicants submit additional information regarding several aspects of the site plan, including the use of brick facade materials; the proposed exterior color schemes for the townhomes; the lighting plan for streets and common space within the project; the possibility of mixing strings of different townhome types; a listing of the standard and optional exterior features for the townhomes and the potential use of a portion of the open area at the southern end of the site for recreational purposes. The Applicants submitted additional information responsive to each of these issues for the Commission's consideration.
23. By letter dated December 29, 1997, Exhibit No. 44 of the record, the applicants provided the additional information the Commission requested at the conclusion of the public hearing. The applicants' explanation in regards to the issues are in part, as follows:
  - a. Site Plan: The development team came to its existing site configuration after considering many options and layouts and after several meetings with representatives from the

D.C. Office of Planning (OP) representatives from the Department of Public Works (DPW) and technical representative from Department of Consumer and Regulatory Affairs (DCRA). The proposed plan is in large measure a response to feedback provided by OP. One of the development team's main considerations were to create a plan with the greatest possible flexibility in case the market does not favorably receive any of the unit types. This led us to immediately eliminate any plan in which individual strings contained different unit types and led us to look for plans that would allow us to continue project construction while obtaining zoning approval for a revised site plan. We expressed our concerns to OP and asked for guidance on the level of flexibility they felt that the Commission would give us if we needed to come back at a later date and substitute one unit type for another. OP advised us that it did not believe that the Zoning Commission would be amenable to allowing us to substitute unit types for one another once a site plan had been approved.

- i. The applicants indicated that given this feedback, they created a plan that reflected their best interest of demands for each unit type that gave them the greatest flexibility. In the event that any of the unit types ailed or is not accepted by the market, they would have to return to the Commission for site modification. The site plan would allow them to stop production of the failed unit while they continue with other unit types as the site plan approval is being considered, for the replacement of the units that had not proffered well in the market.
- ii. These meetings lead to the current plan. It was concluded that the proposed plan provides the best opportunity to develop an attractive, successful, and affordable home ownership community. As regards income integration throughout the community, the existing plan calls for substantial mixture of unit types. On all of the streets except for the new road, units of differing types are across the street from one another.
- iii. Revising the site plan at this juncture is not a viable option. A rearrangement of the placement strings would require the development of an entirely new site plan. The plan that they have

presented have been fully engineered and graded and measured for the location of each individual unit on the specific site on which it sits. Rearranging units would require developing a new site plan, recalculating all of the zoning and lot development data (Tab F, application), re-grading and re-engineering the site. This would take them a minimum of four months. In addition to time, the project could not afford the additional cost to undertake this effort. Fees for re-doing this work would be in the range of \$75-80,000. The project can not afford or support these additional costs.

- b. Open Space: The plan was constrained by the need to reuse existing infrastructure, minimize the use of new infrastructure, maintain a minimal amount of commonly owned land and responsibility for the Home Owners Association, conform with the zoning regulations of the District, and to design a safe, affordable, and very desirable neighborhood. A majority of the proposed site plan meets these goals, however, an area defined by the rear property lines for the homes fronting Mississippi Avenue, Trenton Place, 19<sup>th</sup> Street, and 21<sup>st</sup> Street created a unique design challenge. The plan establishes a common area, measuring roughly three acres with steeply sloped, (nearly 64' of elevation change between roadways), wooded land. The severity of this grade made additional development in this area cost prohibitive.
  - i. Because of its size and nature, the primary portion of the site will be maintained in its natural state with a severe thinning of weaker or non-specimen trees. Remaining trees will be trimmed, allowing for eight feet to ten feet of clearance from the ground to create open sight lines. Ground vegetation will be bush-hogged on a bi-annual basis to clear away the unwanted under brush. Finally, an assortment of wild flowers and low maintenance ground cover will be added to enhance this area of the property.
  - ii. While a large portion of this three acre area is unusable because of the severity of the existing grades, another large section will be taken up by the need to create a storm water collection area - called a "Rain Garden". This unique system utilizes natural vegetation planted in a sand bed to provide an active fibrillation system without the downside of a typical wet/dry pond. It has an

overflow protection limiting the amount of standing water between eight inches to twelve inches. The "Rain Garden" will add to the natural beauty of this open area.

- iii. The design team, looking for additional uses of this ground considered other community uses such as a play area. The remaining portion of the three acre area is a semi-flat area approximately 1/5<sup>th</sup> of an acre at the north with security and on-going cost issues. Tucked behind the homes fronting Trenton Place, the proposed play area was found to be dangerously hidden with the only eyes being provided by a few homes. Additionally, our experience in the neighborhood has proven that these type of play area need to be fenced off to keep out unwanted visitors, particularly at night. In addition to the perimeter fence plan already established, this play area would require another fence that would restrict egress to one way in and out and create a possible trapping of individuals. It would also create the need to hire an individual to lock and unlock the playground daily and to provide for litter collection and other monthly upkeep and maintenance to the area.
- c. Townhome Exteriors: The architectural objectives for the townhome exteriors were flexibility and variety while offering a product that is clearly part of a community of dwellings. There are four basic townhome types, each having two or three separate and distinct elevations. As a result, purchasers at Oxon Creek will have a choice of ten (10) different townhome styles and sizes.
  - i. Each townhome will be faced with vinyl siding and roofed with dark gray asphalt shingles. Townhomes will be staggered slightly to present a more interesting and varied appearance. Purchasers will have a choice of six different siding colors, each with three accent schemes. Color choices will be further constrained by assuring that each string has a distinctive mix of colors. Within each string there will be a gables and a half-gabled roof. In the gabled roof element there will be an inoperable window with applied detail molding for accent purposes. All doors and windows will have accent surrounds. In addition,

shutters, headers and mullions set in thermopane glass will be standard components for all windows. There will be entry features over the front doors and distinctive wall mounted light components for all windows. One-third of the 20-foot and 24-foot townhomes (approximately 55 of the project's townhomes) will have a unique signature element in an oval window above or adjacent to the door.

- ii. Bay windows, decks and patios are optional items for all units. Side entrances will be optional on end units which constitute about 25 percent of the townhomes. Front porches are optional on all units; however, in order to ensure a mixture of facades, the Applicants will require front porches on approximately 20 percent of the townhomes.

- 24. The Commission concurs with the Applicants and the Office of Planning and finds that the project is appropriate for the site, and that the design, density and landscaping are compatible with the neighborhood.
- 25. The Commission further concurs with the Applicants and finds that a mandatory requirement for a portion of the townhomes to have brick facades would be burdensome to the goal of producing affordable housing and actually detracts from the architectural scheme of the townhome design. The Applicants have introduced variety, richness and texture in the appearance of the townhomes by offering a variety of color schemes, styles and options to purchasers.
- 26. 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 March 25, 1998 indicated that the PUD 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 facilitating the development of the subject site in a manner consistent with the best interests of the neighborhood and the District of Columbia.

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 development standards.
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 PUD is not inconsistent with the Comprehensive Plan for the National Capital and the purposes of the Zoning Act.
5. 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.
6. 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.

### **DECISION**

In consideration of the foregoing Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia hereby ORDERS APPROVAL of a planned unit development for the subject site, which includes all of Lots 1-15 in Square 5899, Lots 4-12 in Square 5898, Lots 1-3 and 10-17 in Square 5900 and portions of Lots 4-9 in Square 5900. The approval is subject to the following guidelines, conditions and standards.

1. The planned unit development shall be developed under the existing R-5-A zone district, in accordance with elevations and plans dated July 1, 1997, marked Exhibit No. 3 and 10 of the record and supplemented by plans dated November 17, 1997, Market Exhibit 34 (rendered elevation of 4 units) of the record. The plans were prepared by the Lessard and Architectural Group and the Sutton Yantis Associates, Architects.
2. The maximum number of townhouse units shall be 210 comprising:
  - a. Fifty-two (52), three-story, 1,500 square feet, 2-bedroom, 1½ bath units with or without a garage;

- b. One-hundred and four (104), three-story, 1,800 square feet, 3-bedrooms, 1½ bath units with or without a garage; and
  - c. Fifty-four (54), three-story 1,920 square feet, 3 bedrooms, 2½ bath units with family room and garage.
  - d. Two-hundred (200) of the 210 townhouse units shall be provided to persons of low and moderate income in accordance with the guidelines of the Home Program.
3. The applicant shall construct a new road (Tremont Place) to run between 19<sup>th</sup> and 21<sup>st</sup> Streets, parallel to Mississippi Avenue, S.E. The new road shall be built to the specifications of the District of Columbia Department of Public Works.
  4. The applicant shall provide a total of 361 residential parking spaces comprising 169 garages contained within the townhomes, and 192 on-street parking spaces.
  5. The applicant shall provide two private drives. The first shall be off 21<sup>st</sup> Street, S.E. on the eastern edge of the property, and the second on the northern end of the site connecting Savannah and 21<sup>st</sup> streets, S.E.
  6. The PUD shall have a height of not more than 40 feet, a floor area ratio (FAR) of .56 and a lot occupancy of 23 percent.
  7. Landscaping and paving shall be in accordance with the landscaping shown in the plans marked Exhibit No. 10 of the record.
  8. A major portion of the site shall be maintained in its natural state with a severe thinning of weaker or non-specimen trees. The remaining trees shall be trimmed, allowing for eight feet to ten feet of clearance from the ground to create open sight lines. The ground vegetation shall be bush-hogged on a bi-annual basis to clear away the unwanted under brush. However, an assortment of wild flowers and low maintenance ground cover may be added to enhance this area of the property.
  9. The applicant shall provide or create a storm water collection area (rain garden) consisting of natural vegetation planted in sand to provide an active filtration system without the downside of a typical wet/dry pond. The rain garden shall have overflow

protection limiting the amount of standing water to between eight inches and twelve inches.

10. The applicant shall provide the following as shown on Exhibit No. 34 of the record. (rendered elevation of 4 units)
  - (a). 50 percent of the townhomes shall consist of side and/or front porches.
  - (b) 25 percent of the units shall have bay windows.
  - (c) 25 percent of the remaining units shall have an oval window.
  - (d) a variety of architectural embellishments such as shutters, light fixtures, and wood trims.
  
11. The PUD shall be developed in phases, and shall expire if the following phasing schedule is not followed:
  - (a) Within two years from the effective date of this Order, an application must be filed for a building permit as specified in 11 DCMR Section 2407.1 and Section 2406.8 for the initial string of five (5) townhome units, including the three (3) model units to be located at the northeast corner of Mississippi Avenue and 21<sup>st</sup> street, S.E., plus an additional 45 townhomes with construction of this first phase commence within 3 years of the effective date of this order.
  - (b) Within four years from the effective date of this Order, an application for a building permit for the second phase of the PUD, consisting of 50 percent (78 townhomes) of the remaining shall be filed, and construction to begin five years from the effective date of this Order.
  - (c) Application for building permit for all of the remaining townhomes shall be filed within one year following the last commencement of construction of the second phase with the construction of the third phase to begin within one year after the issuance of the building permit.
  
12. No building permit shall be issued for the site until the applicant has recorded a covenant in the land records of the District of Columbia between the owner and the District of Columbia satisfactory to the Office of Corporation Counsel and the Zoning Regulatory Division of the Department of Consumer and Regulatory Affairs (DCRA). The covenant shall bind the

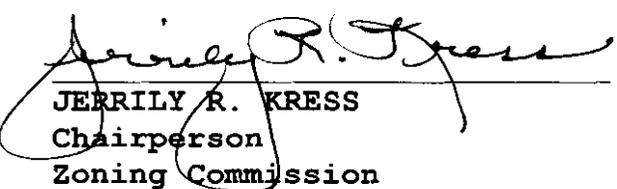
owner and all successors in title to construction and use of the property in accordance.

13. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the applicant has filed a certified copy of the covenant with the records of the Zoning Commission.
14. Pursuant to D.C. Code Section 1-2531(1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25 (1987), and this Order is conditioned upon full compliance with the provisions. Nothing in this Order shall be understood to require the Zoning Division of DCRA to approve permits if the applicant fails to comply with any provisions of D.C. Law 2-38, as amended.
15. The applicants shall enter into a Memorandum of Understanding with the Minority Opportunity Commission which provides that the applicants will make a bona fide effort to award at least 35 percent of the construction-related contracts for the project to Certified Minority Business Enterprises.

By a vote of 3-0 taken at a public meeting held on January 12, 1998 (John G. Parsons, Jerrily R. Kress and Herbert M. Franklin to approve), the Zoning Commission approved the PUD application with conditions.

This order was adopted by the Zoning Commission at its public meeting held on May 11, 1998, by a vote of 3-0 (Herbert M. Franklin, John G. Parsons, and Jerrily M. Kress, to adopt - Anthony J. Hood, and Angel F. Clarens abstained).

In accordance with 11 DCMR § 3028, this Order is final and effective upon publication in the DC Register, that is, on JUN 5 1998, 1998.

  
JERRILY R. KRESS  
Chairperson  
Zoning Commission

  
SHERI M. PRUITT-WILLIAMS  
Interim Director  
Office of Zoning