

### III. SUMMARY OF TESTIMONY

#### A. Applicant's Case in Chief

##### 1. Dale Clendenin.

Mr. Clendenin resides at 4710 Chestnut Street, immediately adjacent to the subject site, and testified in support of the proposed rezoning. Mr. Clendenin was part of a group of citizens who brought the idea of building townhouses on the subject site to the Applicant during the review process for the Rosedale Apartments. He thinks the townhouses would be a great buffer between the single family residential and the adjacent business district and new parking project. He thinks of it as a nice price stabilizer for single family home values compared to the dilapidating houses and gravel parking lot that he currently lives next to. He also prefers the idea of having homeowners living next to him rather than renters, who have less interest in keeping up the neighborhood. Moreover, he prefers townhouses to either mansionization of the neighborhood or commercialization through C-T properties. He would love to see the C-T property on the corner of Rosedale switched to permanent residential zoning.

Mr. Clendenin stated that in the 4700 blocks of Chestnut Street and Rosedale Avenue there has been no opposition to the proposed project. He noted that the opposition is coming from residents of East Bethesda who live farther away from the proposed site. As a result, he hopes that his voice speaks with more impact. Rather than hoping and praying that somebody will buy these properties and redevelop them as single family residences, he thinks it would be better for the neighborhood to have the project that is on the table, which looks good, go forward. Mr. Clendenin is very much opposed to the idea of having a business located close to his house, even if it is "pretty looking." He is not disturbed by the existing townhouse office buildings on the corner of Wisconsin Avenue and Chestnut Streets because he sees the alley as a buffer.

**Witthans, Wynn**

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**From:** Navid, Sarah [Sarah.Navid@montgomerycountymd.gov]  
**Sent:** Tuesday, November 25, 2003 11:27 AM  
**To:** Witthans, Wynn  
**Cc:** amartin@linowes-law.com  
**Subject:** Towns At Rosedale Park 8-04007

Wynn,

We have reviewed the site plan for the Towns At Rosedale Park and recommend its approval. We offer the following comments:

- the 4' wide sidewalk at the curb along Chestnut Street is the most practical design for this site and is acceptable
- the 16' wide alley between Chestnut Street and the townhouse garage access meets our two-way residential alley standard and is acceptable
- the remaining section of alley south to Rosedale Avenue is currently 10' wide and should be designated one way southbound (the applicant will be responsible for providing the Do Not Enter and One Way signing necessary at Rosedale Avenue upon completion of the project).

Thank you for the opportunity to comment on this plan.

Sarah Navid, Right-of-Way Permitting and Plan Review Section, Department of Permitting Services

11/25/2003

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DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan  
County Executive

June 4, 2003

Robert C. Hubbard  
Director

Ms. Joanne M. Cheok  
Dewberry & Davis, LLC  
804 West Diamond Avenue  
Gaithersburg, Maryland, 20878

Re: Stormwater Management **CONCEPT** Request  
for Rosedale Park  
SM File #: 207758  
Tract Size/Zone: 0.46 Acre  
Total Concept Area: 0.46 Acre  
Lots/Block: 30-35 / 3  
Parcel(s): A  
Watershed: Lower Rock Creek

Dear Ms. Cheok:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept consists of a partial onsite water quality control via a water quality storm drain unit and a partial waiver of on-site water quality control. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cfs.

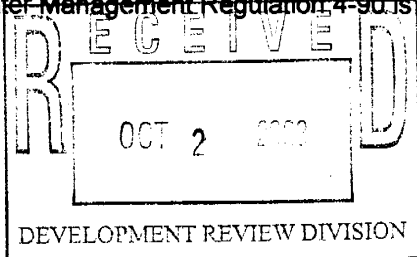
Please submit a revised stormwater management concept for water quantity and water quality control for review and approval, which incorporates the following items:

The following **conditions** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. A water quality storm drain unit must be provided onsite. A trash rack must be installed on the inlet that drains to the stormwater structure. The unit must be sized for all the impervious area that drains to it. This area must include the garage and driveway areas. Stormwater management easement and covenant documents will be required for the unit.

This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 is required.

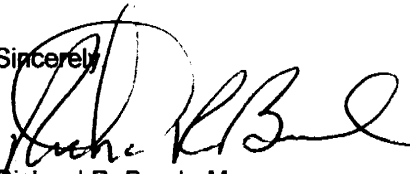


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This letter must appear on the sediment control/stormwater management plan at its initial submittal. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Ellen Rader at 240-777-6336.

Sincerely,



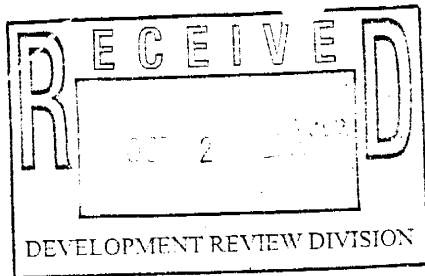
Richard R. Brush, Manager  
Water Resources Section  
Division of Land Development Services

RRB:dm CN207758.RosedalePark.EBR

cc: M. Shaneman  
S. Federline  
SM File # 207758

QN -not required; Acres: 0.46  
QL - partial waiver/ partial onsite; Acres: 0.46  
Recharge is not provided

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MAR 13 2003

Resolution No.: 15-95  
Introduced: March 11, 2003  
Adopted: March 11, 2003

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
IN MONTGOMERY COUNTY**

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By: County Council

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**SUBJECT:** Application No. G-797 For Amendment To The Zoning Ordinance Map, Robert H. Metz And Anne C. Martin, Attorneys For Magruder/Reed Communities, Llc, Contract Purchaser, Opinion And Resolution On Application

Tax Account Nos. 07-00529850; 07-00529815; 07-00529872; 07-00529802

**OPINION**

Application No. G-797, filed on March 14, 2002 by Magruder/Reed Communities, LLC, Applicant, requests reclassification from the R-60 Zone to the R-T 12.5 Zone of 20,000 square feet of land known as Lots 16, 17, 30 and 7 of Block 3 of the Rosedale Park Subdivision. The property is located at 4713 and 4715 Rosedale Avenue and 4712 and 4714 Chestnut Street in Bethesda, one block east of Wisconsin Avenue (MD 355) in the 7<sup>th</sup> Election District. The application was considered under the Optional Method authorized by Code §59-H-2.5, which permits binding limitations with respect to land use, density and development standards or staging.

The Hearing Examiner recommended approval of the application on the basis that the R-T 12.5 Zone at the proposed location would satisfy the requirements of the purpose clause; that the proposed reclassification would be compatible with existing and planned land uses in the surrounding area; and that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The Planning Board and Technical Staff provided similar recommendations. The District Council agrees with these conclusions.

The subject property is rectangular in shape and is comprised of four lots that have been under common ownership for a number of years. The property is located one block east of Wisconsin Avenue, with two lots in the 4700 block of Chestnut Street and two in the 4700 block of Rosedale Avenue. It has 80 feet of frontage along Rosedale Avenue, 86.7 feet of frontage on Chestnut Street, and 240 feet of frontage along a public alley. Three of the lots comprising the property are developed with single-family homes currently used as rental properties, which show signs of deterioration and lack of upkeep. The fourth lot, in the southwest corner of the property facing Rosedale Avenue, is vacant (a single-family house formerly on the lot has been demolished). All four lots are classified under the R-60 Zone, although the applicable master plan recommends the vacant lot for reclassification to the C-T

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(Commercial Transition) Zone. The site slopes gently from Rosedale Avenue to Chestnut Street. There are several large specimen trees on site or nearby within the public right-of-way.

The surrounding area for this application includes parts of two districts described in the *Bethesda CBD Sector Plan*: the Wisconsin North Corridor and the East Bethesda Transition Area. The former is commercial in character with retail and office uses predominating. The latter is characterized by low-density, primarily residential development, green open spaces, and paved parking lots. The surrounding area is located between the Medical Center and Bethesda Metro stations.

To the north of the subject property across Chestnut Street, as well as to the east, are single-family homes in the R-60 Zone. To the northwest on Chestnut Street near Wisconsin Avenue are single-family structures that are classified under the CBD-0.5 Zone and used for commercial purposes. Directly across Rosedale Avenue to the south/southeast are two single-family structures classified under the C-T Zone containing commercial uses. The remaining lots to the east on Rosedale Avenue are single-family residences in the R-60 Zone.

At the intersection of Wisconsin and Rosedale Avenues, immediately west/southwest of the subject property, is the site of the proposed high-rise development known as "The Residences at Rosedale Park" (the "Rosedale Apartments"), which is being developed by the Applicant in the CBD-1 Zone. This development is currently under construction and will consist of two buildings, one on each side of Rosedale Avenue, with rental apartments, ground floor commercial, and underground parking. The building on the northeast corner of Rosedale and Wisconsin will be 64 feet in height and the building on the southeast corner will reach 78 feet. Both will front on Wisconsin Avenue, with substantial landscaping and screening on the sides abutting the residential neighborhood.

At the intersection of Wisconsin Avenue and Chestnut Street, immediately west of the subject property, is an office condominium facing Chestnut Street. This is an older, townhouse-style building, 35 feet in height, housing professional offices. It sits on the edge of the alley right-of-way, with a two-level parking deck accessed from the alley.

The Applicant proposes to build six luxury townhouses on the subject property, as well as a 6,400-square-foot park open to the public. The units facing Chestnut Street would have a 25-foot setback to match the alignment of single-family homes on that street, as well as grading and landscaping designed to match landscaping elsewhere on the street. The park would occupy roughly the front two thirds of the lots facing Rosedale Avenue. As a result, the units facing Rosedale Avenue would straddle the lot lines of the current parcels and sit back farther than existing homes on Rosedale. These units would have a front walkway and landscaped area next to the park.

The park shown on the concept plan was part of a package of off-site amenities that the Planning Board approved for the Rosedale Apartments, the high-rise apartment buildings that the Applicant is building at the intersection of Rosedale and Wisconsin avenues. The square footage designated for the park was not used for compliance with any of the applicable development standards for the Rosedale Apartments, including lot size or required on-site open space. The park serves to satisfy such requirements only in the present case, where it is part of the minimum lot size and minimum green space. Pursuant to a site plan

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enforcement agreement between the Applicant and the Department of Park and Planning, the Applicant is legally committed to creating and maintaining the park. The park is to be a gated facility, open only during daytime hours.

The plan for a park was developed based on discussions among the Applicant, Technical Staff, and community members during the planning process for the Rosedale Apartments. Technical Staff suggested the idea for a park on the subject property as a gateway to the community and a green refuge next to the high-rise apartment buildings. Three of the townhouses proposed in the present case would face the park. They would provide 24-hour surveillance to deter misuse of the park, and the buildings themselves would serve as retaining walls, solving a grading problem. In addition, the townhouses would permanently remove the possibility of potentially incompatible development on the back thirds of the Rosedale lots.

The proposed townhouses would be two stories above finished grade over an English basement, with a maximum building height of 35 feet. The development has been designed to take advantage of the natural grade in locating a two-car garage under each unit. Access to the garages would be from a service lane reached via the public alley. At the request of the Montgomery County Department of Public Works and Transportation, the plan reflects a six-foot widening of the alley from Chestnut Street to the service lane access point to allow two-way movement, with that six-foot strip of land dedicated by the Applicant as public right-of-way. The alley currently measures ten feet in width. To discourage cut-through traffic, that width would be maintained from the service lane access point to Rosedale Avenue, and signage would be installed to permit traffic in only one direction; the direction of traffic flow would be determined at site plan review with input from the community.

The Applicant proposes to limit development under the R-T 12.5 Zone by means of a schematic development plan ("SDP"). Binding elements of the SDP address issues that are very important to neighbors who support this application, particularly architectural elements. The Applicant made specific promises to the neighbors concerning materials and architectural elements that would be make the townhouses compatible with the predominant Federal and Colonial architectural styles in the neighborhood. To fulfill these promises, the Applicant has specified as a binding element that purchasers of the units would be required to choose one of two façade styles, which are depicted on drawings included in the Declaration of Covenants to be filed in the land records upon approval of the rezoning.

The proposed development would be consistent with applicable development standards for the R-T 12.5 Zone with the exception of two side yard setback requirements.<sup>1</sup> First, the R-T 12.5 Zone requires a 30-foot setback from any detached dwelling lot, such as the lots adjoining the subject property to the east. See Code §59-C-1.732(a). The Applicant proposes to locate the townhouses ten feet from the nearest lot line to the east. The Applicant intends to request at preliminary plan and site plan review that the Planning Board waive this requirement, pursuant to its authority under Code § 59-C-1.732(a)(1) note 1. The Applicant

<sup>1</sup> The identification plat originally filed with the subject application indicated that the subject property was slightly smaller than the minimum lot size of 20,000 square feet. A plat of correction has since been approved by the Planning Board and filed in the county land records, correcting a dimensional error on the original record plat for two of the four lots and showing a total square footage of 20,000.4 square feet.



testified that at its public hearing on the case, the Planning Board indicated a willingness to grant this waiver.

Second, the RT-12.5 Zone requires a ten-foot side setback from any adjoining lot that is not a detached dwelling lot. Code §59-C-1.732(a). The Applicant proposes to locate the townhouses facing Chestnut Street at a distance of 4 feet 2 inches from the lot line for the alley and therefore would violate this setback requirement from Chestnut Street to the service lane entrance. (Because of the narrower alley width from Rosedale Avenue to the service lane entrance, the townhouses facing Rosedale Avenue would be located the required ten feet from the alley.) Because the Zoning Ordinance does not authorize a waiver of this side yard requirement, the Applicant would need to obtain a variance from the Board of Appeals. Technical Staff recommended that in lieu of this variance, the width of the three Chestnut Street townhouses be reduced from 22 feet to 20 feet each, which would allow the full ten-foot setback. The potential issuance of the setback waiver and variance, and the relationship between the two, may appropriately be left to the discretion of the Board of Appeals and the Planning Board as post-zoning site plan issues.

The subject property was classified under the R-60 Zone in the 1954 Regional District Zoning, and the same zoning was confirmed in 1958 (countywide comprehensive zoning), 1977 (Sectional Map Amendment G-20), 1990 (SMA G-666) and 1994 (SMA G-711). Petitions for special exceptions to use at least part of the subject property for off-street parking were denied in 1971 (Case No. BA-2990) and 1986 (Case No. S-1318).

The District Council concludes that the proposed rezoning would comply with the purpose clause of the R-T 12.5 Zone. The purpose of the R-T Zone is, inter alia, to provide suitable sites for townhouses in "locations in the County where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses." Code §59-C-1.721. In the present case, the proposed rezoning would provide an appropriate and beneficial transition between the commercial and high-density apartment uses adjacent to the subject site to the west and the single-family homes to the east. The proposed 35-foot-high townhouses would contribute to the stepdown in height called for in the Sector Plan because they would be lower than the Rosedale Apartments and higher than most of the single-family homes in the surrounding area.

The proposed townhouses would be an effective transition in terms of scale and mass both from the high-rise Rosedale Apartments and from the commercial townhouses, which form a combined building over 120 feet in length, nearly twice the combined length of the three Chestnut Street townhouses. While the commercial townhouses have some features that divide them into units, they lack the architectural detail and precise unit definition planned for the proposed townhouses, which tend to reduce the impression of mass. As a result, the proposed residential townhouses would appear significantly smaller in terms of scale and mass.

The proposed townhouses would also provide a transition in use by creating a residential use with a slightly different lifestyle — in particular, more limited outdoor use — next to the commercial uses. In addition, the proposed townhouses would provide a visual buffer between the single-family homes immediately to the east and the urban alley, high rises and commercial development immediately to the west. For many homes east of the subject property, the grouping of the townhouses would largely block the view of the alley and the





detailed, landscaped facades and side walls of the townhouses and/or the park. The townhouses would not completely block the view of the Rosedale Apartments, but they would soften the visual image.

For all of these reasons, the District Council concludes that the proposed rezoning and development would be consistent with the purpose of the R-T Zone. Moreover, the architectural and site design elements satisfy the intent of the R-T Zone to provide amenities normally associated with less dense zoning categories. The evidence also demonstrates that the proposed rezoning and development would be consistent with the intent of the R-T Zone to prevent detrimental effects to adjacent properties and to promote the health, safety, morals and welfare of the present and future inhabitants of the district and the County.

The District Council finds that the proposed development would be compatible with existing and planned land uses in the surrounding area. The surrounding area is made up primarily of two types of uses: high-density commercial uses in the CBD Zone, and low-density, primarily residential uses in the R-60 Zone. Existing and planned development in the surrounding area also includes special exception uses, C-T commercial uses, parking lots, and high-rise apartments. Compatibility will be assessed particularly with regard to the residential portion of the surrounding area, which is more susceptible to adverse effects.

The proposed townhouse development would be compatible with the mix of uses in the surrounding area because it would serve as a transition between the high-rise apartments and office townhouses adjacent to the west and the single-family homes to the east. It would also provide a visual buffer between the single family homes immediately to the east and the urban alley, high rises and offices immediately to the west. In addition, the development would improve the current condition of the alley edge.

The residential use of the townhouses would be compatible with the primarily residential character of the surrounding area east of Wisconsin Avenue.<sup>2</sup> Based on the façade elements that the Applicant has committed to as binding elements, the townhouses would have an architectural style, a level of detail and a quality of materials fully compatible with the prevailing architectural styles in the surrounding area. The 35-foot height of the townhouses would be taller than many of the smaller single-family houses in the surrounding area, but would be fully compatible with newer single-family homes that have been constructed at the 35-foot maximum height for the R-60 Zone. The grouping of the townhouses into blocks of three units would create buildings of a scale and mass that is compatible with adjacent uses: smaller than the adjacent high-rises and office townhouses; similar in scale and mass to larger homes that have recently replaced some of the original houses; and larger as a block than the smaller homes in the area, but still giving the appearance of similar scale, to some degree, due to the distinct units. The proposed setbacks and landscaping would be generally consistent with what has been established in the neighborhood. The planned park will be a benefit to the surrounding area, and would in turn be benefited significantly by the townhouses in terms of security and site grading. The improvement and partial widening of the public alley adjoining

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<sup>2</sup> The residential nature of the use would be limited by the Declaration of Covenants, which restrict permitted uses to the townhouse use itself and a "no-impact home occupation," a very non-intrusive use.

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the property would benefit nearby properties. Finally, the installation of sidewalks and walkways would be compatible with the pedestrian scale of the neighborhood.

The District Council further determines that the proposed zoning bears sufficient relationship to the public interest to justify it. The proposed zoning does not conform to the specific recommendation of the Sector Plan for R-60 zoning and limited C-T zoning. However, the proposed reclassification and development would promote many of the objectives stated in the Sector Plan. The evidence described above concerning compatibility, the role of the townhouses as a transition between commercial and residential uses, and the relationship of this proposal to the park that was planned and approved in connection with the Rosedale Apartments all support the conclusion that the proposed development would help ensure the stability of the residential land uses in the area of the subject property. The townhouses would also be consistent with the objectives of ensuring descending heights from Wisconsin Avenue to Tilbury Street, protecting the neighborhood from cut-through traffic, and encouraging safe and pleasant pedestrian circulation from the neighborhood to the CBD. They would provide an effective transition from the Rosedale Apartments and the existing commercial townhouses in terms of scale and mass. In addition, the townhouses could provide a source of relatively moderately priced homes, compared to the new homes now being built in the neighborhood.

Moreover, strict compliance with the recommendations of the Sector Plan is not a requirement for the reclassification requested in this case. In a floating zone case (such as the present case), master plan recommendations are no more than a guide for the decision maker, unless the zone itself specifically requires master plan compliance. See *Richmarr v. American PCS*, 117 Md. App. 607, 637 (Md.App.1997). The R-T Zone states, in part, that the zone is appropriate in parts of the County designated for the residential density allowed in the R-T Zone, which is understood to mean areas so designated in the appropriate master plan. See Code §59-C-1.72. However, the R-T Zone also states that it is appropriate in locations where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses. See *id.* Thus, the R-T Zone permits, but does not require, the District Council to rely on master plan designations in applying the R-T Zone. The evidence of substantial compliance with many of the objectives of the Sector Plan and the positive findings made by the Planning Board and Technical Staff are sufficient to support a conclusion that the present application adequately serves the public interest in accomplishing a coordinated and systematic development of the County with due regard for established master plan principles.

The evidence demonstrates that the proposed rezoning and development would have no measurable impact on traffic, no significant adverse effect on parking conditions, and no significant effect on other public facilities or the environment. The proposed rezoning and townhouse development would be very beneficial to the park that has already been approved as a public amenity.

The opposition argued that approving the rezoning requested in this case would encourage land speculation by sending a signal to developers that property in the East Bethesda Transition Area is eligible for higher-density zoning. Each individual zoning application must be assessed on its own merits. The unique circumstances of the present application – including the location on the alley, adjacent to commercial townhouses and major high-rise development; the 20,000-square-foot property size; the removal of potential C-T

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zoning; and the need to coordinate with the pre-existing plan to develop a park on the property – are unlikely to be duplicated. Absent such circumstances, there is no reason to expect that an applicant would be able to demonstrate consistency with the purpose of the zone sought, compatibility, or an ability to serve the public interest. The possibility that developers may mistakenly perceive approval of the proposed rezoning as a favorable precedent is not an adequate reason to deny an otherwise meritorious application.

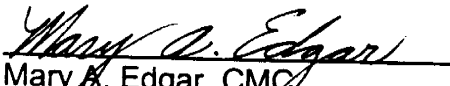
For these reasons and because to grant the instant zoning application would aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be granted in the manner set forth below.

**ACTION**

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-797, for reclassification from the R-60 Zone to the R-T 12.5 Zone of 20,000 square feet of land known as Lots 16, 17, 30 and 7 of Block 3 of the Rosedale Park Subdivision, located at 4713 and 4715 Rosedale Avenue and 4712 and 4714 Chestnut Street in Bethesda in the 7<sup>th</sup> Election District, is hereby approved in the amount requested subject to the specifications and requirements of the revised schematic development plan recommended for approval above; provided that, within 10 days of receipt of the District Council's approval resolution, the Applicant must submit the revised schematic development plan, Ex. 48(a), for certification in accordance with §59-D-1.64; and provided, further, that upon receipt of the District Council's approval resolution the Applicant must immediately file the Declaration of Covenants in accordance with §59-H-2.54.

This is a correct copy of Council action.

  
Mary A. Edgar, CMC  
Secretary of the Council

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