Government of the District of Columbia
OFFICE OF ZONING

Z.C. CASE NO.: 04-24

As Secretary to the Commission, I herby certify that on OCT - 7 2005 copies of this Z.C. Order No. 04-24 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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ZONING COMMISSION
District of Columbia
CASE NO. 04-24
EXHIBIT NO. 40

ZONING COMMISSION
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CASE NO.04-24
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 04-24
Z.C. CASE NO. 04-24
(First-Stage Planned Unit Development and Related Zoning Map Amendment at Rhode Island Avenue Metrorail Station)
September 15, 2005

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on May 26, 2005, to consider applications from A&R Development Corporation and Mid-City Urban LLC for approval of a First-Stage Planned Unit Development and related Zoning Map Amendment from M to C-2-B. The Commission considered the applications pursuant to Chapters 24 and 30 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the applications.

FINDINGS OF FACT

The Applications, Parties, and Public Hearing

1. On September 24, 2004, A & R Development Corporation and Mid-City Urban LLC (the "Applicant") filed applications for review and approval of a First-Stage Planned Unit Development ("PUD") and related Zoning Map Amendment (collectively, the "Applications") for a portion of Parcel 131 (Lot 233 and portions of Lots 234 and 235, the "PUD Site").

2. The owner of the property is the Washington Metropolitan Area Transit Authority ("WMATA"), which has entered into a ground lease and development agreement with the Applicant.

3. At its November 8, 2004 public meeting, the Zoning Commission (the "Commission") determined to set down the Applications for public hearing.

4. The Applicant submitted its Pre-Hearing Submission on March 4, 2005, and the Commission held a public hearing on the Applications on May 26, 2005. The Commission heard testimony from the Applicant and its expert witnesses and

from the Advisory Neighborhood Commissioner ("ANC") from ANC 5B03 and individual citizens.

5. The Applicant and ANC 5B were the only parties in the case, but the ANC did not participate.

6. At its August 1, 2005 meeting, the Zoning Commission took proposed action by a vote of 4-0-1 to approve with conditions the Applications and plans presented at the public hearing and found in Exhibit 14 of the record of the case.

7. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated July 28, 2005, found that the proposal did not adversely affect the identified federal interests nor be inconsistent with the Comprehensive Plan for the National Capital.

The Property and the Surrounding Area

8. The property is located immediately to the east of the Rhode Island Avenue Metrorail station in Northeast Washington and comprises Lot 233 and parts of Lots 234 and 235 in Parcel 131.

9. The PUD Site consists of the existing Metrorail commuter parking lot, vehicular service lanes, and pedestrian walkways for the transit station. The site is generally bounded by Rhode Island Avenue, N.E. on the north, the access roadway to the Metrorail Station on the east and south, and the Metrorail and railroad tracks on the west.

10. The PUD Site has 319,446 square feet of area, or 7.33 acres, and is situated on a fairly level plateau elevated above Rhode Island Avenue. An abutting parcel of 1.44 acres (62,954 square feet) will be developed as a matter of right by WMATA as a 200-car parking garage to replace the existing commuter parking lot. This development and property is not part of the PUD.

11. The existing land use pattern in the four (4) quadrants surrounding the intersection of the Rhode Island Avenue Metrorail Station and Rhode Island Avenue reflects the historical industrial uses and zoning of this area. The area immediately surrounding the station consists of some continuing light industrial uses, vacant industrial structures and land, "heavy" commercial uses such as automotive repair, places of worship, and newer retail uses. A large postal distribution center is located to the south of the PUD Site. This core area around the metro station is in turn surrounded by residential neighborhoods – Brentwood, Brookland, Edgewood, and Eckington.

12. Immediately to the east of the PUD Site is the still-developing Brentwood Shopping Center, which includes an existing Home Depot store and a large Giant

supermarket. A third site will accommodate two (2) additional large-format retailers.

Existing and Proposed Zoning

13. The PUD Site, and the area to the south and west of it, is currently zoned M (General Industry), which permits general industrial and commercial uses up to a maximum density of 6.0 FAR and a maximum height of ninety (90) feet. The existing zoning prohibits new residential uses and is, therefore, not suitable to accommodate a mixed-use town center development as proposed in this PUD application.

14. The predominant zoning in the other three (3) quadrants (using Rhode Island Avenue and the railroad tracks as the dividers) is C-M-2, a medium density light industrial zone that allows a maximum density of 4.0 FAR and a maximum height of sixty (60) feet. The northwest quadrant is zoned C-3-A (medium-density commercial), and part of the northeast quadrant is zoned C-2-C (high-density mixed use).

15. The Applicant requests rezoning of the PUD Site to the C-2-B District, a medium-density mixed-use zone that will accommodate the requested height and bulk of buildings and the proposed mixture of residential and retail uses. As a matter of right, C-2-B allows a maximum density of 3.5 FAR for residential and mixed uses, with a maximum of 1.5 FAR devoted to commercial uses. Maximum permitted height is sixty-five (65) feet. With a PUD, the maximum permitted density is 6.0 FAR with a 2.0 FAR limitation on commercial uses, and a maximum permitted building height of ninety (90) feet. This zoning will accommodate the proposed development, which has a maximum building height of eighty-one (81) feet and a density of 1.83 FAR.

The PUD Project

16. The design vision for Rhode Island Avenue Metro is to create a vibrant, mixed-use town center that combines living, work, and retail spaces to promote a sense of community within the larger context of the surrounding neighborhoods. The plan features a "New Urbanist" Main Street with smaller scale neighborhood restaurants and shopping, a pedestrian orientation and easy access to rapid transit via Metrorail and bus.

17. The Applicant's three (3) goals for the design of Metro Plaza are to:

    a. Create an urban, pedestrian-friendly environment, designed with New Urbanist principles, which would also be accessible by other forms of transportation, including automobiles and public transportation.

b. Provide destination and specialty retail tenants that will attract Metrorail commuters as well as residents of the new community and the surrounding neighborhoods.

c. Provide line-of-sight and pedestrian linkages to the large-format Brentwood Shopping Center adjacent to the east. This will increase pedestrian traffic through Metro Plaza and increase access and patronage to the shopping center without adding vehicular traffic.

18. The plans for Rhode Island Avenue Metro create a Main Street that is generally perpendicular to the Metrorail tracks and approximately 570 feet long. At the ground floor level (and in some locations, on the second floor), Main Street will be lined on both sides with retail stores, restaurants, cafes, and convenience services. Three (3) stories of rental apartments will be located over the retail uses on both sides of Main Street. On the north side of Main Street will be a parking garage behind the retail stores that negotiates the slope down towards Rhode Island Avenue. Along the Avenue will be mixed-use buildings facing the street and backing up to the parking garage and to the mixed use buildings on the uphill, interior side of the site.

19. The buildings fronting on the 440 feet of frontage on Rhode Island Avenue will be mixed use, with active uses on the ground floor and three (3) floors of apartments above. The types of ground floor occupants are expected to include incubator space for local businesses at reduced rents; neighborhood arts organizations; and other community uses or businesses not requiring curb-side parking in front of the store or foot traffic.

20. At the east end of the Rhode Island Avenue frontage is the access drive to the Metrorail station. Along this roadway and up to Main Street, new development will continue seamlessly and will "wrap around" on to Main Street. Here the ground level will be retail stores, including one large-format store, with apartments above.

21. The south frontage of Main Street, like the north frontage, will be lined with ground floor retail and entertainment uses, with a second parking garage located to the rear. This garage was planned to provide parking for residents only, but as part of the second stage of this PUD, the Applicant will address the feasibility of the garage providing overflow parking capacity for the Metro station. The two (2) garages accommodate a total of 451 spaces. There will also be forty-one (41) short-term, on-street spaces along Main Street to serve the stores, restaurants, and cafes. The PUD Site also accommodates fifteen (15) Kiss & Ride and five (5) taxi drop-off spaces for Metrorail customers.

22. Main Street will be pedestrian and retail oriented. The design plan includes continuous storefronts with large display windows and frequent entrances, served

by ample sidewalks with amenities such as benches, landscaping, and special lighting and pavement details. Residential amenities will include a community room, health room, and other support spaces, all sited around and focused on a well-landscaped common space. A swimming pool is situated in a sheltered location to the south of Main Street.

23. The 271 rental apartments are projected to include a mix of approximately 106 one-bedroom units, 148 two-bedrooms and 17 three-bedrooms. Twenty percent (20%) of the apartments will be affordable to low and moderate income households, including units for households with fifty percent (50%) of Metropolitan area median income.

24. The aggregate gross floor area for the PUD project, including the two (2) on-site parking garages, is 585,660 square feet of gross floor area, and the floor area ratio ("FAR") is 1.83.

25. The report of the Applicant's transportation consultant, dated May 11, 2005 was submitted to the record of the case and to the D.C. Department of Transportation ("DDOT"). The report examines existing traffic conditions, levels of service, circulation to and within the PUD Site plan, parking and loading, trip generation from the proposed PUD project and the total traffic situation. The report concludes that the proposed PUD project would have no appreciable adverse traffic impacts on the surrounding roadway network or land uses. The report also concludes that the proposed site access, parking, and loading provisions will be adequate from both the operational and safety perspectives. The consultant recommends that the main internal intersection at the Metrorail access roadway, Main Street and the Brentwood Shopping Center entrance be further evaluated, including a signal warrant analysis and remedial measures as necessary. This recommendation recognizes that this intersection will serve as a "'Gateway' to a major mixed land use complex comprising the Metro station, the Brentwood Shopping Center and the proposed Rhode Island Avenue Metro Development."

26. On a separate lot to the south of the PUD Site, WMATA will construct a 200-car parking garage to replace the existing surface parking on the PUD Site. It will be constructed as a matter of right in the M District. Automobile and bus traffic destined for the Metrorail parking garage will follow the existing perimeter access road to reach this garage, thereby by-passing Main Street and maintaining it as primarily a local shopping and service street, and a pedestrian way to the Metrorail station.

Public Benefits and Project Amenities

27. The Commission finds that the project will create the following public benefits and project amenities:

a. *Mixed-Use Town Center.* This project will offer the benefits of a mixed-use, transit-oriented development. The uses will reinforce each other, creating convenience and amenity for the occupants and the public. The retail and service uses will be supported by Metrorail customers and on-site residents and as a result will have more size and diversity to serve residents of the surrounding neighborhoods. Because of these three (3) primary bases of customer support, the retail establishments have a strong basis for economic viability. Retail and service establishments tend to hire a high proportion of neighborhood residents, and retail and residential uses pay a high rate of taxes to the city.

b. *Transit-Oriented Development.* Transit-oriented developments in general help to offset sprawl and undue increases in automobile traffic that would result from the same amount of development in more scattered locations. The town center will have ample amenity spaces and a Main Street that is pedestrian-friendly and easily walked end-to-end while parking once for the convenience of and appeal to shoppers. The project exhibits the six (6) positive features highlighted in the Office of Planning's ("OP") report on transit-oriented development:

1) Mix of Uses
2) Attractive Architecture and Design
3) Pedestrian-Friendly, Safe Environment
4) Parking Management
5) High Quality Public Realm and Amenities
6) Orientation and Connectivity.

c. *Housing Supply, Affordable Housing, and Population.* The 271 apartments will add to the city's housing supply and population, an important and high-priority goal of Mayor Anthony Williams and OP. Twenty percent (20%) of the units will be affordable and thus will help meet city's critical need for housing for low- and moderate-income people, another high-priority goal of the District of Columbia government. The on-site residents will help create evening activity on Main Street, thereby improving public safety and helping extend the business hours and economic productivity of the retail uses.

d. *Architecture and Urban Design.* The architecture and urban design of the project are visually and functionally appealing and will be an enhancement to the neighborhood and the District of Columbia. The town center is designed to create a strong sense of place generally following "neo-traditional" or "New Urbanist" design principles. The buildings have traditional design detailing and proportions and a human scale. The public spaces are well defined, and the shops along Main Street create a street wall lined with display windows and entrances to shops to create customer

interest and to invite walking along the ample sidewalks with landscaping and benches. At 570 feet, the length of Main Street is walkable by shoppers, who will only have to park once to patronize any of the shops or restaurants, as well as the big box stores at the adjacent Brentwood Shopping Center. A special design feature is the creation of a new active street frontage of mixed-use buildings along Rhode Island Avenue. This will create a more attractive and functional urban environment than the bare bluff that exists alongside Rhode Island Avenue at present.

e. *Transportation.* The project will provide residents of the apartments with immediate access to the Metrorail rapid transit system for automobile-free travel around the city and region. The project successfully incorporates the necessary parking, access drives and pedestrian ways to serve the Metrorail station while achieving important new development on the PUD Site. The access road to the Metrorail station already exists and can absorb the moderate increase in traffic generated by this medium-density mixed-use development. The access road is sufficiently long that there is no reason to anticipate traffic backups on Rhode Island Avenue itself. However, the traffic circulation information provided by the Applicant was inadequate despite the repeated attempts of the Commission to obtain greater detail. The Commission will revisit this PUD evaluation factor at the second stage at which time the Applicant must provide far more information concerning traffic circulation than its current submittal.

28. The Commission finds that the project is consistent with numerous policies of the Comprehensive Plan in the Housing, Economic Development, Environment, Land Use, Transportation, and Urban Design Elements, as well as the following major theme:

a. *Respecting and Improving the Physical Character of the District.* A large underutilized site at a Metrorail station but in a generally declining industrial area will be put to much more beneficial use in terms of aesthetics and economic development than the existing parking use. There will be no displacement of existing residents or businesses. The PUD project will contribute to the long-term physical and economic improvement of the area around the Rhode Island Avenue Metrorail Station.

Report of the Office of Planning

29. By report dated May 16, 2005 and by testimony presented at the public hearing, OP recommended approval of the Applications. The OP report reviewed the history of modifications of the project, noting favorably that the Rhode Island Avenue frontage will be developed with mixed-use buildings including community incubator space and retail uses with ground-floor ceiling heights of at

least fourteen (14) feet. OP also noted that the retail and entertainment uses on Main Street will occupy two (2) floors in some locations. The report cited consistency with several Comprehensive Plan policies and designations, including the designation in the Land Use Element of this location as the Rhode Island Avenue Metrorail Development Opportunity Area. Such a designation encompasses Metrorail station areas where there are opportunities for development because of significant amounts of underutilized land nearby that can support development for housing and commercial development while also promoting increased ridership for Metrorail. OP also made several recommendations regarding the second-stage application, including a 14-foot minimum ceiling height for ground floor retail and incubator space, shared parking, the option of artist studios or live-work space in community space, and First Source and LSDBE agreements.

Other District of Columbia Agencies

30. DDOT submitted a report dated May 20, 2005 recommending approval of the first-stage PUD. The report also raised several concerns and recommended that the Applicant address these in the second-stage application. DDOT recommends that the number of kiss-and-ride parking spaces be replaced in kind, that several visitor parking spaces for the apartments be provided, and that a few parking spaces be allocated to car-sharing services. The report referenced the transportation consultant's recommendation for a signal warrant analysis of the proposed intersection at Main Street, the perimeter road, and the Brentwood Shopping Center Entrance.

Advisory Neighborhood Commission 5B

31. ANC 5B did not submit a report on this case or testify at the public hearing. However, the Commissioner for ANC 5B03 testified at the public hearing and submitted a copy of a letter she had written to WMATA and OP expressing serious concern about the reduction in commuter parking spaces for Metrorail riders from 340 on the surface lot to 200 spaces in the WMATA parking garage that will be constructed adjacent to the PUD Site. The letter requested that WMATA and OP reconsider and authorize a larger parking garage.

CONCLUSIONS OF LAW

1. The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interests of the District of Columbia.

2. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other

incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.

3. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a two-stage PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

4. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

5. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

6. The PUD is within the applicable height and bulk standards of the Zoning Regulations. The height and density will not cause an adverse effect on nearby properties. The proposed mixed-use development is appropriate on this site, which is well served by a major arterial street, bus lines and a Metrorail station immediately adjacent to the PUD Site.

7. First-stage approval of this PUD and the proposed C-2-B zoning of the PUD Site are not inconsistent with the *Comprehensive Plan for the National Capital.*

8. First-stage approval of the PUD Applications will promote the orderly development of the site in conformity with the entirety of the District of Columbia Zone Plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

9. The Commission is required under D.C. Code § 1-309.10(d) (2001) to give great weight to the issues and concerns raised in the recommendations of the affected ANC. The Commission notes that the affected ANC did not submit written recommendations in this proceeding nor testify at the public hearing.

10. The Application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the Applications for approval of a First-Stage Planned Unit Development and for a related Zoning Map Amendment from M to C-2-B for the PUD Site, that is, Lot 233 and portions of Lots 234 and 235 in Parcel 131, located near 9th Street and Rhode Island Avenue, N.E. This approval is subject to the following conditions:

1. The final design of the PUD shall be developed in accordance with the site plan and preliminary architectural and landscape plans submitted as Exhibit 14 in the record of this case, and as modified by the guidelines, conditions and standards of this order.

2. The maximum building height in the project shall be ninety (90) feet, and the maximum aggregate gross floor area shall be 1.90 FAR.

3. The project shall be a mixed use town center development generally as depicted in the preliminary plans submitted in this first-stage application. The project consists of approximately 271 rental apartments totaling approximately 354,860 square feet of gross floor area; 70,000 gross square feet of retail uses; additional ground floor uses on the Rhode Island Avenue frontage consisting of incubator space, community uses, artist studios, and similar uses; and 451 parking spaces.

4. Twenty percent (20%) of the apartments (54 units) shall be made available and restricted for a period of twenty (20) years as affordable housing for qualifying households having incomes not exceeding fifty percent (50%) of area median income ("AMI").

5. The ground floor of commercial space along Main Street and Rhode Island Avenue shall provide a ceiling height of no less than fourteen (14) feet.

6. The Applicant shall submit with the second-stage application detailed plans and elevations indicating the design treatment of the proposed PUD project, including but not limited to architectural and landscape details, building and landscape materials, color, and zoning data as required for a second-stage PUD application.

7. The Applicant shall submit the following additional plans with the second-stage application:

    a. A preliminary subdivision plat showing dimensions of the proposed lot or lots, centerlines and width of proposed streets and access ways;

    b. A rough grading plan showing the proposed grading of the site, location of retaining walls, and areas of critical slope;

c. A utility plan showing the general location of utilities, including stormwater management and BMP devices; and

d. Plans showing dimensions and treatment of open space and other common areas.

8. Traffic and parking analysis for the second-stage application shall include and address the following matters:

a. A reevaluation of the allocation of parking spaces between uses;

b. The need and feasibility of increasing the number of kiss-and-ride parking spaces shall be evaluated;

c. The number of parking spaces adjacent to the median on Main Street shall be reduced in a manner that increases pedestrian safety and amenity;

d. The internal intersection formed by the Metrorail perimeter road, Main Street and the adjacent Brentwood Shopping Center shall be evaluated for operational, capacity and safety issues and for a signal warrant analysis;

e. In relationship to 8d. above, the Applicant shall propose the most functional and attractive pedestrian connection feasible to the Brentwood Shopping Center to the east of the PUD Site and shall consult with the owners of the retail center regarding the connection;

f. The feasibility of utilizing the second parking garage to provide overflow parking for the Metro Station; and

g. A traffic circulation plan that addresses the repeated requests of the Commission for greater detail, ignored by the Applicant during this proceeding.

9. The Applicant shall execute the following agreements prior to the adoption of the second-stage PUD in this case:

a. A First-Source Employment Agreement with the Department of Employment Services; and

b. A Memorandum of Understanding with the District of Columbia Office of Local Business Development ("LSDBE") to ensure minority vendor participation.

10. This first-stage PUD approval by the Zoning Commission shall be valid for a period of one (1) year from the effective date of this order. Within such time, the

Applicant shall file a second-stage PUD application in order for this first-stage application to remain in effect.

11. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On Aug. 1, 2005, the Commission took proposed action to **APPROVE** the application by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Kevin L. Hildebrand to approve; Carol J. Mitten, not having participated, not voting) .

The Order was adopted by the Zoning Commission at its public meeting on September 15, 2005, by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Kevin L. Hildebrand to approve; Carol J. Mitten, not having participated, not voting) .

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on OCT - 7 2005.

ANTHONY J. HOOD
VICE CHAIRMAN
ZONING COMMISSION

JERRILY R. KRESS, FAIA
DIRECTOR
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