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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance
From: Sharon S. Schellin
Secretary to the Zoning Commission
Date: September 18, 2007
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on September 28, 2007:

1. Z.C. Notice of Final Rulemaking & Order No. 06-23;
2. Z.C. Order No. 04-24A; and
3. Z.C. Order No. 06-21.

These Final Rulemakings and Order is also provided on the attached diskette. Thank you in advance for your assistance in this matter.

Attachment

ZONING COMMISSION
District of Columbia
CASE NO. 04-24A
EXHIBIT NO. 35

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**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 04-24A**

Z.C. Case No. 04-24A

**Second-Stage PUD – Mid-City Urban LLC and A & R Development Corporation
(Part of Parcel 130, Lots 220 and 221)**

April 9, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on February 26, 2007 to consider an application from a partnership of Mid-City Urban LLC and A & R Development Corporation (collectively, the “Applicant”) requesting approval of a second-stage planned unit development (“PUD”) for property adjacent to the Rhode Island Avenue Metrorail Station near 9th Street and Rhode Island Avenue, N.E. The Washington Metropolitan Area Transit Authority (“WMATA”) is the property owner, having granted a long-term ground lease to the Applicant to accomplish the proposed development. The proposed project is a mixed-use town center comprising rental apartments, retail uses, and project and public amenities. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below the Commission hereby approves the Application subject to the specified conditions.

FINDINGS OF FACT

Application, Parties, and Hearing

1. In Zoning Commission Order No. 04-24, dated September 15, 2005, effective upon its publication in the *D.C. Register* on October 7, 2005, the Commission approved the first stage of this planned unit development for a proposed mixed-use town center on the PUD site. On July 20 and August 11, 2006, the Applicant submitted its second-stage application. On September 11, 2006, the Commission deferred setting down the case for public hearing, pending the Applicant’s submission of additional information. The Applicant supplemented its application on October 6, 2006, and the Office of Planning provided its supplemental report the same day. The case was set down for hearing on October 16, 2006. The Applicant provided its prehearing statement on October 18, 2006 and a Supplemental Submission on February 6, 2007.
2. A description of the proposed development and the Notice of Public Hearing were published in the *D.C. Register* on November 10, 2006 (53 DCR 9186). The Notice of Public Hearing was also mailed to owners of all property within 200 feet of the subject property, as well as to Advisory Neighborhood Commission (“ANC”) 5B.

3. The Applicant requested final approval of the plans and site plan for the Rhode Island Avenue Metro town center development approved in the first-stage application.
4. The parties in the case were the Applicant and the Advisory Neighborhood Commission (“ANC”) 5B, the ANC in which the PUD site is located.
5. On February 26, 2007, the Commission conducted and completed the public hearing, while requesting additional information on some aspects of the case and exterior materials samples to be submitted to the record.
6. The Commission took proposed action to approve the application on March 12, 2007 by a vote of 4-0-1.
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 March 30, 2007, found the proposed PUD would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.
8. The Commission took final action to approve the Application on April 9, 2007 by a vote of 4-0-1.

Second-Stage Application and Project

9. The property that is the subject of this application consists of approximately 368,282 square feet of land and is located immediately to the east of the Rhode Island Avenue Metrorail Station near 9th Street and Rhode Island Avenue, N.E. (part of Parcel 130, Lots 220 and 221). The PUD site consists of the existing parking lot for the Metrorail station plus land extending north to the Rhode Island Avenue frontage, all owned by WMATA. The subject property is zoned C-2-B pursuant to the first-stage PUD order in this case, Order No. 04-24, effective October 7, 2005.
10. The Applicant proposed to construct a mid-rise, mixed-use town center, consisting of 274 rental apartments with a gross floor area of 321,544 square feet, approximately 70,000 square feet of retail space, and associated amenities such as a green roof and a swimming pool. The total proposed density was 1.52 FAR. The development will be organized around a “Main Street” running perpendicular to the Metrorail station, with three stories of residential apartments above ground-floor retail uses on both sides of Main Street. The mixed-use development pattern will also wrap around Washington Place (the entrance drive to the transit station) and will continue along the Rhode Island Avenue frontage. The exception is that on the Avenue frontage within 340 feet of the railroad overpass, residential uses rather than retail uses will occupy the ground-floor level. Two parking garages will be integrated into the development and will provide 469 parking

spaces for retail, residential, and shared residential-Metrorail customer parking. (Immediately to the south of the PUD site, WMATA will construct, or will have constructed by the Applicant, a 215-car parking garage to accommodate some of the 387 spaces on the existing parking lot that will be displaced by the proposed town center development.) Twenty percent of the apartments will be maintained as affordable for a period of 20 years to households making 50 percent or less of the Washington, D.C. Metropolitan Area Median Income ("AMI").

11. At the public hearing, Douglas Hale, the representative from WMATA, stated that the PUD project had the full support of the transit authority and resulted from WMATA's Joint Development program.
12. The project manager from A & R Development Corporation, Kapres Meadows, summarized the project, including the partnership of Mid-City Urban LLC and A & R Development Corporation, and project milestones from 2001 to the present. Construction was projected to occur from January 2008 (with the WMATA garage off-site) to completion in December 2009. He also testified regarding the rent levels for the affordable dwelling units and the wide range of retail, service, and restaurant tenants that will be sought for the retail area. He summarized the important community benefits of the PUD project as follows:
 - (a) Transit-oriented development;
 - (b) Affordable housing and expansion of the total housing supply;
 - (c) Retail services for the neighborhood and Metro users;
 - (d) Retail space for non-credit community businesses;
 - (e) Green building elements;
 - (f) Harmony Cemetery memorial; and
 - (g) First Source and LSDBE agreements.
13. The project architect, Steve Gang of the Lessard Group, presented the site plan and architectural plans. He emphasized the Applicant's attempts to respond fully to the Commission's design comments from the setdown meetings. Some of the design changes were:
 - (a) Elevations: Activation of building facades by alternating building depths through the use of setbacks and bump-outs; using a variety of colors, materials, window muntin patterns, and ornamental elements; shutters; and variation in Hardieplank widths;

- (b) Garages: Improved character of garage exteriors and improved design integration of the garages into the overall development;
- (c) Building Materials: Selection of exterior materials to create good quality design, noting the quality and environmental benefits of Hardieplank panels and cultured stone;
- (d) Green Roof: Enhanced plans for a green roof for the plaza in Building 2, including limited pathways and seating for residents;
- (e) Condenser Grills: Revised project elevations to show that they will not be prominent design features, but to highlight the energy-saving benefits of such units;
- (f) Presentation: Use of color renderings and elevations on the architectural presentation to accurately depict how the finished development will look.

14. The landscape architect, Joseph Plumpe from Studio 39 Landscape Architecture, P.C., presented the landscape architecture exhibits, including streetscape elements and proposed plantings along Main Street, Rhode Island Avenue, the perimeter road, swimming pool amenity area, and fronts of buildings. Existing mature trees along Rhode Island Avenue will be retained. Plantings will be in keeping with the function of the various areas in the town center. The landscape architect also presented the exhibits for streetscape materials and site furnishings. Sidewalks will be primarily composed of scored concrete. Site furnishings, such as benches, trash receptacles, bike racks, café tables and kiosks, will be of a coordinated style and color to complement each other as well as the architectural design. Streetlights will be in scale with pedestrian use and be either pole mounted “Washington globe” style or hang above the driving lanes on cables or a combination of the two. Strategically located crosswalks will complete the streetscape design to encourage safe pedestrian use throughout the day and evening.

15. The President of Mid-City Urban LLC, Victoria Davis, described how the community retail space set-aside would work. She stated that the affordable units will probably “float” in the development rather than being specifically designated units. She also explained the complex parking management system needed for the site to function properly. She depicted the electronic signage system proposed for the entry to the site regarding the parking status of the two garages plus the Metrorail parking garage adjacent to the PUD site, as well as the signs at the entrance to each garage that will indicate to drivers the availability of spaces. She also described the flow through the garages and how the shared parking will function and be controlled. She also testified regarding:

- (a) The rationale for the level of parking provided for Metrorail, retail, and residential uses;

- (b) The evolution of parking levels and resolution of issues with all stakeholders, especially balancing the transit-oriented goals for limiting total parking with concerns of community interests for adequate on-site parking for all users. The use of shared Metro-residential parking spaces was critical in reaching an optimal solution.
- (c) The parking breakdown will be 215 spaces in the Metrorail garage (off-site), 70 shared spaces each in Garages 1 and 2; 13 Metro/retail shared spaces on Main Street; 6 Metro/retail taxi spaces; and 14 Metro Kiss-N-Ride spaces. Thus, 387 spaces will be available to Metro users. The Applicant agreed to extended hours (to 10:00 p.m.) for the shared spaces and to charge only Metro rates rather than market rates.

16. The transportation consultant, Osborne George of O.R. George and Associates, testified that pedestrian and vehicular circulation will be safe and effective. His testimony described the timing and volumes of circulation modes -- buses, commuter cars, retail customers, on-site residents. He emphasized the following points:

- (a) Peak usage time frames for pedestrians and vehicles are not simultaneous but are staggered. Commuter traffic peaks at 6:00 - 7:00 a.m. and 3:00 - 4:00 p.m.; Kiss & Ride peaks at 8:00 - 9:00 a.m. and 5:00 - 6:00 p.m.; and pedestrian Metrorail users peak at 8:00 - 9:00 a.m. and 5:00 - 6:00 p.m. This staggered timing helps promote safety and efficient site circulation.
- (b) Dominant pedestrian movements are from the north and the south and will encounter only limited conflicts with vehicular movements. The Metrorail parking garage will provide access to the station without requiring pedestrians to cross a street.
- (c) The planned traffic signal, stop signs, calming measures, and low speed limits will provide effective and safe traffic management. Internal and external levels of service meet city standards.
- (d) The project will be transit-oriented development, in compliance with the District's public policies, including the Comprehensive Plan.
- (e) A traffic simulation model was developed to show all traffic modes in movement and to test the system.

Report of the Office of Planning

17. By report dated February 16, 2007, the Office of Planning ("OP") recommended approval of the application. The report reviewed the evolution of the project since the first-stage

PUD approval and noted that the second-stage application was in compliance with the first-stage order. OP stated that the provision for 20 percent of the units as affordable to households earning 50 percent or less of the Washington, D.C. Metropolitan AMI was a strong amenity. The report indicated that the project was in conformance with the Comprehensive Plan, specifically as to the Generalized Land Use Map and the designation of the site as a "Metrorail Development Opportunity Area." Other public benefits and project amenities favorably cited by OP included: ground-level retail uses with ceiling heights of 14 feet or more, extensive landscaping and a green roof, 7,000 square feet of community business space, and the signed First Source hiring agreement.

Report of the District Department of Transportation

18. By memorandum dated February 26, 2007, the District Department of Transportation ("DDOT") stated it did not object to the PUD provided the Applicant: 1) designed and installed a new traffic signal at the main internal intersection; 2) improved crosswalk markings at the external intersection of Rhode Island Avenue, Reed Street, and Washington Place, N.E.; 3) provided at least two parking spaces for use by car-sharing vehicles; and 4) coordinated with DDOT to develop a transportation demand management plan. The report noted that the perimeter road will be widened to three lanes and will accommodate two-way traffic.

Advisory Neighborhood Commission 5B

19. By letter dated February 9, 2007, ANC 5B stated its continuing support for the PUD project, noting that the Applicant had met numerous times with the ANC during the past year. The letter strongly supported the achievement of one-to-one replacement parking for Metrorail users and stated, "Rhode Island Avenue Metro Plaza will be a wonderful new amenity to our community and we request [the Zoning Commission's] approval of the PUD application." On December 1, 2005, the ANC approved a formal resolution of support for the PUD. The chairman of the ANC testified in support, noting that the proposed town center will be instrumental in stimulating economic vitality and high-quality development on Rhode Island Avenue, N.E. The single-member district Commissioner for ANC 5B03 also testified in support, while expressing concerns about continued communications between the development team and community representatives going forward.

Testimony in Support and in Opposition

20. The Councilmember from Ward 5, Harry Thomas Jr., submitted a letter dated February 5, 2007 in support of the PUD project, emphasizing the benefits of the affordable housing units, the community retail set-aside, positive design changes in response to community concerns, and resolution of complex parking issues. In the letter and in testimony at the

public hearing, he praised the high quality of the proposed town center and its projected effect of encouraging greater public transit use.

21. The Washington Smart Growth Alliance (“SGA”) submitted a letter in support dated February 8, 2007 and also testified in support. SGA is a coalition of five member organizations. The SGA’s Project Recognition Jury selected the PUD project as an exemplary smart growth development, based on location, mobility and accessibility, density, design, diversity of uses, affordable housing, environmental assets and community participation. The jury found the PUD project to be “a well-designed and thoughtful example of a mixed-use development around a transit station in a neglected neighborhood.” The use of shared parking and achievement of an optimal number and usage of parking spaces were cited as a potential model for other transit-oriented developments.
22. By letter dated February 20, 2007, Neil Albert, the Deputy Mayor for Planning and Economic Development, supported approval of the PUD. He praised the thorough community and multi-agency participation process followed by the Applicant in development of the PUD plan. He also cited the project as a model for transit-oriented development in Washington and stated that the development will spur additional investment in the Rhode Island Avenue corridor. The letter also favorably noted the affordable housing component of the PUD.
23. The Brentwood Civic Association submitted a letter in support, dated September 15, 2006, stating that its membership was favorably impressed with the project and especially citing the PUD’s provision of places to shop, restaurants, gathering places, and affordable housing as positive features. The Association also praised the Applicant’s proposed action to create a memorial for Harmony Cemetery.
24. There was no testimony in opposition.

CONCLUSIONS OF LAW

1. The PUD process is an appropriate means for controlling development of the site in a manner consistent with the best interests of the District of Columbia. The PUD process is designed to encourage high-quality development that provides public benefits (11 DCMR § 2400.1) and allows 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.)
2. Under the PUD process of the Zoning Regulations, the Zoning Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading,

yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the BZA.

3. 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.
4. Approval of this application is not inconsistent with the *Comprehensive Plan for the National Capital*.
5. Approval of this application is consistent with the intent and purposes of the Zoning Regulations and the Zoning Map of the District of Columbia, the PUD process, and the first-stage approval, and approval will promote orderly development in conformity with the Zone Plan as a whole.
6. The PUD is within the applicable height and bulk standards of the Zoning Regulations, and the proposed height and density of buildings will not cause any adverse effect on nearby properties. The proposed mixed-use town center development is appropriate on this site, which is well-served by the abutting Metrorail station, a major arterial street, and numerous bus lines. The impact of the project on the surrounding area will not be adverse, but rather will enhance neighborhood quality, access to commercial services, and expansion of the housing supply, including affordable housing.
7. The development of the project is compatible with District-wide and neighborhood goals, plans and programs and is sensitive to environmental protection, public safety, and other significant public objectives.
8. The Commission is required under D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001) to give great weight to the issues and concerns raised by the affected ANC and to the recommendation of the Office of Planning. The Commission notes that the affected ANC, 5B, testified in support of the Application, as did the Office of Planning.
9. The Application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, as amended.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission orders **APPROVAL** of the second-stage PUD application. The subject property is located near the intersection of 9th Street and Rhode Island Avenue, N.E. and is legally identified as part of Parcel 130, Lots 220 and 221. This approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the site plan and architectural and landscape plans submitted as Exhibits 12A, 19, and 29 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 as depicted in the final plans approved in the second-stage application. The project will consist of approximately 270 rental apartments totaling approximately 322,000 square feet of gross floor area; 70,000 gross square feet of retail uses; additional ground floor uses for community businesses; and approximately 531 garage and on-street parking spaces.
4. Twenty percent of the apartments (54 units) shall be made available and restricted for a period of 20 years as affordable housing for qualifying households having incomes not exceeding 50 percent of the Washington, D.C. Metropolitan AMI. The Applicant is not required to designate specific units to be the affordable units, so long as the 20 percent requirement is maintained on an on-going basis.
5. The Applicant shall devote 7,000 gross square feet of the retail floor area to non-credit, community businesses.
6. The Applicant shall coordinate with DDOT to coordinate signalization of the internal intersection formed by the Metro perimeter road, Main Street, and the adjacent Brentwood Shopping Center.
7. Pedestrian and vehicular safety features shall be provided as depicted in the approved plans. Such features include street cross-walk markings, stop signs, traffic signals, and speed limit signs.
8. The Applicant shall erect electronic signs that advise incoming automobile drivers of the availability of parking spaces in the parking garages.
9. At least two parking spaces shall be reserved for by Flexcar, Zipcar, or similar car-sharing service.
10. The PUD project may be developed in phases.
11. The Applicant shall have the flexibility to:
 - (a) Vary the location and design of all interior components of the buildings, provided that the variations do not change the exterior configurations of the buildings;

- (b) Vary the final selection of the exterior materials within the color ranges and materials types as proposed, based on availability at the time of construction without reducing the quality of materials. The Applicant may also make minor refinements to exterior details and dimensions needed to comply with the D.C. Construction Codes and the Americans with Disabilities Act (“ADA”) or otherwise necessary to obtain a building permit;
- (c) Vary the mix of apartment unit types by up to 10 percent;
- (d) Design and erect a memorial to Harmony Cemetery in the southern part of the site, in cooperation with community interests.

12. The green roof depicted on Building 2 may include a walking trail and a limited amount of outdoor furniture, provided that the passive green roof shall occupy no less than 60 percent of the roof area.

13. The Applicant shall execute the following agreements prior to applying for a building permit:

- (a) A First-Source Employment Agreement with the Department of Employment Services; and
- (b) A Memorandum of Understanding with the District of Columbia Department of Small and Local Business Development (“DSLBD”) to ensure minority vendor participation.

14. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General for the District of Columbia and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs (“DCRA”). Such covenant shall bind the Applicant and all successors in title to construct and use the subject property in accordance with this Order, or amendment thereof by the Zoning Commission.

15. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA until the Applicant has filed a certified copy of the covenant with the Office of Zoning.

16. This final PUD approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, the Applicant shall file for a building permit as specified in 11 DCMR §§ 2408.8 and 2409.1. Construction shall start within three (3) years of the effective date of this Order.

17. 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, which 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 March 12, 2007 the Zoning Commission **APPROVED** the application by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, and John G. Parsons to approve; Michael G. Turnbull not having participated, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on April 9, 2007 by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, and John G. Parsons to approve; Michael G. Turnbull 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 _____.