Government of the District of Columbia
OFFICE OF ZONING

Z.C. CASE NO.: 04-37

As Secretary to the Commission, I herby certify that on OCT 19 2005 copies of this Z.C. Order No. 04-37 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*

2. Cynthia Giordano, Esq.
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206

3. Angela Thompson-Murphy, Chair
ANC 7A
4310 Texas Ave., S.E.
Washington, D.C. 20019

4. Charlene Exum
ANC/SMD 7A04
3423 Minnesota Ave., S.E.
Washington, D.C. 20019

5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

6. Councilmember Vincent C. Gray

7. Julie Lee
General Counsel
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002

8. Office of Planning (Ellen McCarthy)

9. Ken Laden, DDOT

10. Zoning Administrator

11. Office of the Attorney General
(Alan Bergstein)

ATTESTED BY: Sharon S. Schellin
Sharon S. Schellin
Acting Secretary to the Zoning Commission
Office of Zoning

ZONING COMMISSION
District of Columbia
CASE NO. 04-37
EXHIBIT NO. 43

ZONING COMMISSION
District of Columbia
CASE NO.04-37
EXHIBIT NO.43

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 04-37
Z.C. Case No. 04-37
(PUD and Map Amendment – Eastgate Senior Residences)
September 15, 2005

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on May 23, 2005 to consider an application from the District of Columbia Housing Authority ("DCHA"), A&R Development Corporation ("A&R"), and The Henson Development Company ("THC", and together with DCHA and A&R, the "Applicant") for consolidated review and approval of a Planned Unit Development ("PUD") and related map amendment, pursuant to Chapter 24 of the District of Columbia Municipal Regulations ("DCMR"), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022 for contested cases.

FINDINGS OF FACT

The Application, Parties and Hearing

1. On December 17, 2004, the Applicant filed an application for consolidated review and approval of a PUD and related zoning map amendment (the "Application") for a triangular shaped lot bounded by Anacostia Road to the north, Ridge Road to the west and B Street to the south and east (Square 5409, Lots 22-25) (the "PUD Site").

2. On January 13, 2005, the Zoning Commission decided to schedule a public hearing on the Application. After proper notice, the Zoning Commission opened and completed the public hearing on May 23, 2005. The only party in attendance was the Applicant, although Advisory Neighborhood Commission ("ANC") 7A, the boundaries of which include the PUD Site, had party status as well.

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

4. At its July 11, 2005 meeting the Zoning Commission took proposed action by a vote of 5-0-0 to approve with conditions the Application and plans presented at the public hearing.

5. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by action dated July 28, 2005, found that the proposal would neither adversely affect the federal interest nor be inconsistent with the Comprehensive Plan for the National Capital.

6. The Zoning Commission took final action to approve the Application on September 15, 2005.

The Site and the Area

7. The Property consists of approximately 54,538 square feet of land constituting Lots 22, 23, 24 and 25 in Square 5409 (pending processing of application for consolidation of lots into Lot 26, Square 5409) in Southeast Washington, D.C. The site is currently zoned R-5-A (Low-Density Apartments/General Residential), which allows a maximum density of 0.9 FAR and a maximum building height of three stories and 40 feet as a matter of right and 1.0 FAR and 60 feet with a PUD.

8. The PUD Site is located between Anacostia Road, S.E. to the north, Ridge Road, S.E. to the west and B Street, S.E. to the south and east. The property is triangular in shape with a limited amount of natural vegetation. The proposed building will be situated generally in the eastern portion of the lot with parking and open space occupying the western-most side. Roughly one-third (1/3) of an acre at the intersection of Anacostia Road and B Street will remain open space. The site of the proposed senior housing development was formerly part of the Stoddert Terrace multi-family public housing complex, which was built in 1960. However, the site has been vacant since the former housing complex was cleared by DCHA in 1998.

9. The Application requested a zone change from R-5-A to R-5-B as part of the Application because the proposed building exceeds the bulk limits of the R-5-A zone. The proposed height of the building, however, could be accomplished within the 60-foot height limit allowed in R-5-A with a PUD.

10. The surrounding land use context in this section of the Marshall Heights neighborhood is predominantly residential. The residential development across Anacostia Road is composed of single-family homes. Across B Street there are two-story detached homes that are accessible from an alleyway. Across Ridge Road and part of B Street here exists a mixture of two- and three-story garden apartments that are public housing facilities owned and operated by DCHA. The

above-cited residential areas are zoned R-5-A, a designation that allows the various types of residential development that currently exist.

11. Public transportation serves the PUD Site well, with Metrobus stops along adjacent streets. The availability of public transportation will improve the percentage of senior housing residents commuting by public transit and reduce automobile dependence.

The PUD Project

12. The proposed apartment building will have 100 one-bedroom senior units. The height of the proposed building is four stories and 49' 10". The gross floor area ("g.f.a.") as designed is 88,582 square feet, which equals a density of 1.62 floor area ratio ("FAR") on the lot area of 54,538 square feet. Lot occupancy is 43 percent.

13. The development design maximizes the amount of green space and is well under the building coverage allowed for property zoned R-5-B. The existing roadways of Anacostia Road and B Street will provide vehicular access to the site.

14. The exterior of the building will consist of two colors of brick and two colors of vinyl siding. The other exterior material will be an External Insulating and Finishing System ("EIFS"), which will provide added energy efficiency and visual appeal. The building has been oriented to ensure that the overall design of the apartment building will be contextual with the surrounding neighborhood.

15. The current configuration of air conditioning units for each apartment will ensure that the visibility of the units will be masked by matching the units to the color of the building. At the public hearing, the Applicant presented sample photographs of the finished product based on a similar project in the area.

16. The building will provide special amenities for seniors, including grandparents' room, exercise room, health care, security and convenient access to public transportation.

17. The parking area is located on the corner of Anacostia Road and B Street to maximize green space, and the associated landscaping will diminish the impact of the surface parking and provide a buffer for the residential units. The parking lot is also oriented so that it is perpendicular to the nearby residential homes, minimizing the visual impact even further. A six-foot (6') brick screen wall with wooden doors will be used to screen the service and loading areas. This service area will contain an emergency generator, trash containers, electrical transformers and other mechanical equipment for the building. Landscaping will also be used

to soften the impact of the screen wall and provide an additional buffer surrounding the service area.

18. The landscaping plan provides for adequate open space and a pedestrian friendly environment. The landscaping will include brick pavers and stamped asphalt for selected areas, such as the sitting areas, to create attractive spaces for residents to use for rest and relaxation. The landscaping plan proposes a mix of architectural (building façade) and pedestrian-scale lighting that is mounted at lower heights to optimize its utility for pedestrians. One of the significant features of the site plan is its recognition of the therapeutic value of the landscaping for senior residents. The inner courtyard will contain numerous shrubs and ornamentals that will provide seasonal color as well as fragrances, inviting residents to use the site for walking and exercise.

19. The Applicant has entered into a First Source Agreement wherein it has agreed to use the Eastgate Community Supportive Services Program and the District of Columbia Department of Employment Services as the first source for recruitment, referral and placement of employees. In addition, the Applicant will enter into a Local, Small and Disadvantaged Businesses Memorandum of Understanding ("LSDBE MOU") with the District of Columbia.

20. In response to requests by the Zoning Commission at the public hearing, the Applicant submitted a Post-Hearing Submission on June 20, 2005 that addressed several issues. This submission clarified issues regarding the possible use of African-inspired brickwork, copies of revised elevations and plans, a materials sample board and a written description of potential changes to the pocket park. This submission also provided documentation of the Applicant's First Source employment agreement.

21. As addressed in the Applicant's Pre-Hearing Statement and in testimony at the public hearing, the following public benefits and project amenities will be created as a result of this project.

    a. Comprehensive Plan: Major Themes. The proposed new senior housing exemplifies many of the 10 Major Themes set forth in the Comprehensive Plan, including: "Stabilizing and improving the District's neighborhoods;" "Respecting and improving the physical character of the District and "Providing for diversity and overall social responsibilities."

    b. Comprehensive Plan: Low-and Moderate-Income Housing. One of the objectives listed in the Comprehensive Plan is "[t]o provide for the housing needs of low- and moderate-income residents."

    c. Comprehensive Plan: Policy Objectives. The following policies designated in the Comprehensive Plan: "Continue to rehabilitate and improve the

District's public housing stock to meet current housing standards . . .", "Develop and encourage the use of the most energy efficient systems and methods for insulating, heating, and cooling multi-unit low- and moderate-income rental housing" and "Continue the city's comprehensive effort to address the number and percentage of vacancies within the District's public housing inventory."

d. Comprehensive Plan: Elderly Housing. The Comprehensive Plan includes a specific elderly housing objective, "to provide for the housing needs of elderly households and to reduce the overall cost of housing among elderly household." This project directly furthers this policy by establishing ". . . as a matter of major governmental priority the production of housing for elderly households," continues ". . . comprehensive efforts to modernize and upgrade District-owned housing for the elderly projects," assists in the continued "improve[ment of] the District's publicly owned housing for the elderly units," and furthers "[z]oning and health regulations . . . designed to promote an increase in supply, security, and affordability of housing for the elderly."

e. The Comprehensive Plan: Land Use. The Comprehensive Plan requires that the city's "[l]and use policies must ensure that all neighborhoods have . . . sufficient housing opportunities to accommodate a range of needs," and the Generalized Land Use Map of the Land Use Element designates the PUD site for "Moderate Density Residential" use and development. The Office of Planning has consistently considered the R-5-B District to be "not inconsistent" with the Moderate Density Residential designation. In this case, the proposed density of 1.62 FAR is also within the moderate range. The proposed height of forty nine feet ten inches (49' 10") is less than the allowed sixty feet (60') of height for a PUD in either the existing R-5-A or requested R-5-B zones.

f. Comprehensive Plan: Ward 7 Element. This project is true to the focus of the Ward 7 plan, which requires that the city "[p]rovide for the housing needs of the elderly and to reduce their overall housing costs" and provide "a wider range of housing opportunities for the elderly." The Ward 7 plan also states that "emphasis should be given to low cost affordable housing for the elderly in Ward 7."

g. Attractive architecture, urban design and landscaping. The proposed development will assist in the provision of senior housing on a lot that will retain significant amounts of open space. The development proposed in this PUD contains attractive urban design features and new landscaping. The project ensures that open space will be maintained and upgraded to create a more pleasant and interactive environment for residents and guests. The building will be compatible in scale and design with the surrounding

neighborhood. The landscaping plan will enhance both the private and public open spaces of the property. The apartment building includes superior functional areas for the use of the future residents, including a grandparents' room, health care, security and convenient access to public transportation.

h. Minimal Transportation Impacts. The proposed elderly housing development will generate an usually low level of automobile travel in and out of the site. The PUD Site is served by Metrobus routes and is close to Metrorail.

i. HOPE VI Amenities. The fact that this site is included in the New Eastgate HOPE VI development will allow residents to access additional social services and local residents will be eligible for enhanced job creation and training activities. Tenants of the Eastgate Senior Residences will be members of the Eastgate Residents Association Community Development Corporation ("ERA CDC") which is a Section 501(c)3 nonprofit that will manage and oversee the community and supportive services for residents of the HOPE VI developments. Through its case managers, ERA CDC will interview residents to determine their individual needs and assist them in obtaining job training, homeownership opportunities and skills training. In addition, residents will have health and emergency services provided by an array of social service partners. The Eastgate Senior Residences tenants will also be targeted with on-site healthcare management in the wellness room provided. Nurses will be able to conduct medical exams, develop treatment/case management plans and conduct follow-up visits as required. Health management services will address hypertension, diabetes, respiratory illness, and depression and other emotional or mental illness. The HOPE VI plan also targets Eastgate Senior Residences tenants for life-enrichment services promoting independent living for the senior and disabled adult population. The program will focus on transportation and daily living activities and will offer the services of the Kenning Institute, an affiliate of Duke University's Center for the Study of Aging and Human Development.

Office of Planning Report

22. By report dated January 3, 2005 and by testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the Application, stating "OP strongly supports the provision of housing specifically geared towards low to moderate income, elderly residents. This development will enable DCHA to better allocate it housing resources to the residents they serve. OP believes that the proposed PUD is not inconsistent with the elements of the Comprehensive Plan . . ."

Reports of Other Agencies

23. By report dated May 6, 2005, the D.C. Department of Transportation stated that "additional traffic generated by this project will have no significant impact in terms of capacity and level of service on the surrounding intersections."

Advisory Neighborhood Commission 7A

24. Advisory Neighborhood Commission 7A ("ANC 7A") did not submit a statement at the public hearing or in the record. The Applicant presented plans to ANC 7A on several occasions.

Other Community Organizations/Members

25. Letters in support of the PUD application were submitted to the record from the Eastgate Redevelopment Association, Marshall Heights Community Development Organization, the Fort Dupont Civic Association, Dupont Commons Homeowners Association Board of Directors, LaTanya Hill, Kenneth Council and Delores Wade.

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 developments that provide 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. 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 efficient and attractive overall planning and design not achievable under matter-of-right development.

4. The Zoning Commission has the authority under the Zoning Regulations to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines and standards that may be exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, yards, or courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the BZA.

5. The approval of this PUD is not inconsistent with the Comprehensive Plan.

6. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.

7. The development of this PUD is compatible with city-wide goals, plans and programs and is sensitive to environmental considerations. The Commission also finds that the proposed PUD is not inconsistent with the Comprehensive Plan.

8. The Zoning Commission finds that the impact of the proposed PUD on the surrounding area and upon the operation of city services and facilities is acceptable given the significance, quantity and quality of public benefits cited in Finding No. 21, above.

9. The proposed PUD can be approved with conditions that ensure that the development will enhance the neighborhood and ensure neighborhood stability.

10. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1997.

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 this application for consolidated review of a planned unit development for Lots 22, 23, 24 and 25 in Square 5409 (pending processing of application for consolidation of lots into Lot 26, Square 5409). The approval of this PUD is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed in accordance with the plans prepared by the architectural firm of Grimm & Parker, marked as Exhibits 5, 16, and 36 as modified by the guidelines, conditions and standards of this Order.

2. The subject property shall be rezoned from R-5-A to R-5-B.

3. The development approved in this PUD shall be a new, 100-unit, three- and four-story apartment building for senior citizens. Rents will be in the affordable range for low- and moderate-income households.

4. The density of the development shall not exceed 1.62 FAR and the maximum lot occupancy shall not exceed 43 percent.

5. The height of the building shall not exceed 50 feet.

6. The development shall provide off-street parking for 19 vehicles, as shown on the site plan.

7. Exterior materials shall include two types of brick and siding.

8. The Applicant shall have the flexibility to:

   a. Vary the location and design of all interior components of the building, provided that the variations do not change the exterior configuration of the building.

   b. In the design of the pocket park, to add plaques, monuments, shrubs, hedges, flowers, benches and potentially a gazebo and walkway.

   c. Make minor adjustments to the width, location and orientation of the driveway entrances to the Property from Anacostia Road and from B Street in consultation with the District Department of Transportation in the building permit process.

   d. Eliminate the dumb waiter from the plans and to create a paved pathway from the entrance to the Terrace Level around the building to the loading platform area, for purposes of efficient trash removal.

   e. Deviate from the roof colors provided on the material board, by using materials that are in substantial accordance with the colors provided by the Applicant in its post-hearing submission.

   f. Provide African-oriented designs in the brick façade of the building in substantial accordance with the graphic representations provided by the Applicant in its post-hearing submission.

9. The Applicant shall enter into a Memorandum of Understanding with the D.C. Office of Local Business Development prior to the issuance of a building permit. The Applicant shall abide by the terms of the executed Memorandum of Understanding with the D.C. Office of Local Business Development in order to achieve, at a minimum, the goal of thirty-five percent (35%) participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance, and security for the project to be created as a result of the PUD project. After the completion of construction of the project, the Applicant shall provide a written status report to the Zoning Commission and the D.C. Local Business Opportunity Commission regarding compliance with this agreement.

10. The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services (DOES) in order to

achieve the goal of utilizing District of Columbia residents for at least fifty-one percent (51%) of the jobs created by the PUD project. After completion of construction of this project, the Applicant shall provide a written status report to the Zoning Commission and the DOES regarding compliance with this agreement.

11. Pursuant to 11 DCMR § 2409.3, no building permit shall be issued for this planned unit development until the applicant has recorded a covenant in the land records of the District of Columbia, between the owner and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs (DCRA). This covenant shall bind the Applicant and all successors in title to construct on and use the subject property in accordance with this Order or any amendment thereof.

12. 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 records of the Zoning Commission.

13. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, application shall be filed for a building permit as specified in 11 DCMR §§ 2408.8 and 2409.1. Construction shall start within three years of the effective date of this Order.

14. 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 July 11, 2005, the Commission voted to approve the Application by a vote of 5-0-0 (Anthony J. Hood, Carol J. Mitten, Gregory N. Jeffries, Kevin L. Hildebrand, and John G. Parsons to approve).

The Order was adopted by the Zoning Commission at its public meeting on September 15, 2005, by a vote of 5-0-0 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Gregory N. Jeffries, and Kevin L. Hildebrand to adopt).

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 21 2005.

CAROL J. MITTEN
CHAIRMAN
ZONING COMMISSION

JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING