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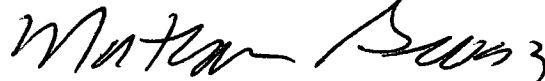
Carol J. Mitten, Chair
D.C. Zoning Commission
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

RE: Zoning Commission Case No. 05-24
Applicant's Proposed Order

Dear Ms. Mitten:

Transmitted herewith are 20 copies of the Applicant's proposed order in Case 05-24 (Eastgate Family Housing PUD). An electronic copy was transmitted on February 2, 2006.

Sincerely,
ARNOLD & PORTER LLP


Nathan W. Gross, AICP

Enclosures

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ZONING COMMISSION
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ZONING COMMISSION
Case No. 05-24
CASE NO. 05-24
EXHIBIT NO. 34

ZONING COMMISSION ORDER NO. 05-24
Case No. 05-24
(Consolidated PUD –Eastgate Family Housing)
February 9, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on January 12, 2006 to consider an application from the D.C. Housing Authority and the associated private development team of A & R/THC II LLC for review and approval of a consolidated planned unit development (“PUD”) pursuant to Chapter 24 of the District of Columbia Municipal Regulations (“DCMR”), Title 11, Zoning. The proposed development is a mixed-income residential community with various building types and an open space preserve. The public hearing was conducted in accordance with the contested case provisions of 11 DCMR § 3022. For the reasons stated below the Zoning Commission hereby approves the Application subject to the specified conditions.

FINDINGS OF FACT

The Application, Parties and Hearing

1. On July 28, 2005 the Applicants (the D.C. Housing Authority and the associated private development team of A & R/THC II LLC) submitted an application to the Zoning Commission for a consolidated PUD utilizing the existing R-5-A zoning of the subject property.
2. The application requested approval of the plans and site plans depicting 186 dwelling units, including 158 townhouses, 20 detached single-family dwellings and 8 units in two grand homes (each having four units). The plans also include an open space preserve, or “Urban Tree Park” of 2.5 acres on the site.
3. The Office of Zoning received the Applicant’s Pre-Hearing Submission on October 21 and December 8, 2005.
4. A description of the proposed development and the Notice of Public Hearing were published in the *D.C. Register* on [], 2005. The Notice of Public Hearing was mailed to all property owners within 200 feet of the subject property, as well as to Advisory Neighborhood Commission (“ANC”) 7E.
5. The parties in the case were the Applicant and Advisory Neighborhood Commission 7E.
6. The Zoning Commission opened and completed the public hearing on January 12, 2006. At the conclusion of the public hearing the Zoning Commission requested supplemental information and analysis from the Applicant, which was received on January 26, 2006.

7. The Zoning Commission took proposed action to approve the application on _____, 2006 and final action on _____, 2006.

The Site and the Area

8. The property that is the subject of this order consists of approximately 16.03 acres of land area (698,382 square feet) in the Marshall Heights neighborhood. The site is bounded by Fitch Street, 51st Street and F Street, Queen's Stroll Place and Benning Road, all S.E. It is a rolling hillside that changes in grade by approximately 80 feet, rising from Benning Road and Fitch Street to the level of the rest of the neighborhood at its north and east ends. The property is identified as Lots 9-20 in Square 5318, Lots 20-36 in Square 5319 and Lots 29-36 in Square 5320 (the "PUD Site").
9. Surrounding development adjacent to the perimeter streets of the PUD is predominantly three-to-four-story apartment buildings or open spaces, with the exception of a group of six detached houses along Queen's Stroll Place. The only nearby commercial area is the C-2-A strip on the west frontage of Benning Road between Fitch and F Streets.
10. The majority of the land area of the surrounding neighborhood is zoned R-5-A (Low-Density General Residential) or R-2 (Semi-detached Dwellings). R-5-A is a low-density apartment house zone that allows a variety of residential building types within a height limit of 40 feet, three stories and a maximum floor area ratio ("FAR") of 0.9. With a PUD the maximum permitted building height is sixty feet (60') and the maximum floor area ratio ("FAR") is 1.0. Existing development is predominantly detached and semi-detached houses, and four-story apartment buildings. There are also several pockets of C-1 (Neighborhood Convenience Commercial) zoning nearby, especially on Benning Road.
11. Community services such as the Metropolitan Police Boys and Girls Club and the Benning Park Recreation Center are located just to the north and south of the residential area. The largest parcels of land in the neighborhood (other than Eastgate Gardens) accommodate three public schools -- Fletcher-Johnson Middle School, J.C. Nalle Elementary School and C.W. Harris Elementary School. Numerous places of worship also serve the neighborhood.

The PUD Project

12. The apartment buildings formerly constituting the 230-unit Eastgate Gardens public housing development have been demolished, and the PUD Site is currently vacant.
13. The Applicant testified that it plans to develop the PUD Site with 186 dwelling units, including 158 townhouses, 20 detached single-family dwellings and 8 units in two grand homes (each having four units). The overall goal is to create a stable, mixed-income residential community, with the emphasis on affordable housing.

Eighty units (43%) will be in the low-income range, 42 units (23%) will be in the moderate-income range and 64 units (34%) will be market rate. The breakdown of the 186 dwelling units by building type, affordability and tenure is as follows:

<u>Building Type/Number</u>	<u>Tenure</u>	<u>Affordability</u>
53 townhouses Income ("AMI")	Rental	At or Below 60% Area Median
19 townhouses	Sale	At or Below 60% AMI
42 townhouses	Sale	60-80% AMI
44 townhouses	Sale	Above 80% AMI (Market)
20 detached houses	Sale	Above 80% AMI (Market)
8 grandhomes units	Rental	At or Below 60% AMI

14. The site plan is generally described as follows. Two- and three-story townhouses in groups of three to five units will line the perimeter street frontages facing the surrounding neighborhood along F Street, Queen's Stroll Place, 51st Street and Fitch Street. The only minor exceptions to this pattern are a short section of open space along Fitch Street and two grandhomes sited at the corner of 51st Street and Queen's Stroll Place. Eighty-six of the townhouses have garages and 72 do not; all of the detached dwellings have either a one-car or a two-car garage.
15. The new community will be pedestrian-friendly, with ample sidewalks, street lamps and ample open spaces. Common areas and the Urban Tree Park provide a total of 2.88 acres of open space out of the 16.03-acres site. Two tot lots are also provided for in the project plans.
16. The interior of the PUD Site will be served by two new streets that are proposed to be public streets, lined with six-foot-wide sidewalks, lighting and street trees following public street standards. These streets are continuations of E and F Streets outside the PUD Site. The streets form a U-shaped, loop road where both frontages will be developed with detached single-family houses. The design principle embodied here is that like housing types will face each other along the street frontages.
17. Five-foot-wide easements run through the center of rear yards between new public streets numbers one and two. This easement will provide access to the dwellings for residents of the for-sale units and management in the case of rental units. This easement is needed for maintenance and rear access to yards. Such easements are also proposed in other locations as depicted on the Circulation and Parking Plan, Sheet C-9.0 of the plans. The easements allow "dry" utilities to be located underground, a major benefit in terms of visual and design quality.
18. The second proposed new street will be in the southern part of the site. It would be curvilinear, run generally east-west and would connect to 51st Street on the east and Fitch Street on the west. The south frontage would be developed with groups of townhouses and the north frontage with six detached dwellings. An

east-west public alley will serve the interior of this block. A tot lot will be located at the western end of the townhouses facing the new, interior street.

19. To the south and west of the detached houses is a large proposed open space of approximately 2.5 acres. This area consists of steeply-sloping land with substantial coverage with mature trees in places. The Applicant's team determined that creating streets and new buildings on this part of the site would be environmentally undesirable and created the site plan accordingly. The Applicant submitted plans to preserve the mature trees in this open space and create an Urban Tree Park. At the upper part of this area will be a pedestrian path linking the two tot lots, together with a sitting area and meadow. In the lower part, Applicant's landscape architect will work in cooperation with the Casey Tree Foundation, the Urban Forestry Administration and the Earth Conservation Corps to re-establish the heavily-treed area as a self-sustaining natural woodlands.
20. Building heights will range from just under 23 feet for the two-story detached houses to 33 feet, 6 ¾ inches for the three-story townhouses. The grandhomes and two-story townhouses are in the range of 23 to 24 feet high. All of the proposed building heights are well within the 60-foot building height allowed in R-5-A with a PUD. Lot occupancy is 35.15 percent based on the area divided in the lots, and drops to 27.23 percent as a percentage of the lot areas plus open space. This is well within the allowed 40 percent lot occupancy in the R-5-A District.
21. The Applicant testified that the new residential community will have substantially fewer dwelling units than the previous Eastgate Gardens public housing complex, so that automobile trip generation will be reduced. Public Metrobus service connecting to the Benning Road Metrorail station and other destinations is convenient, with numerous lines along Benning Road and 51st Street.
22. The "Traffic Impact Analysis" by O. R. George & Associates, Inc., indicated that:

[T]he proposed development can occur as planned, without any significant adverse traffic impacts. The study area intersections currently operate at acceptable Levels of Service, during both the morning and afternoon peak hours. . . . [I]t is therefore projected that the study area intersections would continue to operate acceptably upon build-out and occupancy of the Eastgate Family Housing. The study has also concluded that the proposed development would not create any appreciable roadway capacity, safety, or operational deficiencies, nor otherwise be unacceptable in terms of its impact on the surrounding area.
23. Parking will be ample and will exceed the R-5-A requirement of one parking space per dwelling unit -- a requirement of 186 spaces. There will be 132 spaces in garages and 186 in driveways for a total of 318 off-street parking spaces. In addition there will be 56 curbside parallel parking spaces on public streets.

Public Benefits and Project Amenities

24. The Application offers the following public benefits and project amenities and other statements of compliance with the PUD Evaluation Standards set forth in 11 DCMR § 2403:
- (a) A new, high-quality, mixed-income residential community will replace the former, deteriorated public housing complex that exhibited social, physical and environmental problems. The revitalization plan features a housing mix tailored to homeowners and renters with a wide spectrum of incomes.
 - (b) The PUD project is directly in furtherance of specific public plans and policies, including the Eastgate/Marshall Heights Neighborhood Alliance Plan and the D.C. Office of Planning's *Cluster 33 SNAP* initiative.
 - (c) The PUD is not inconsistent with the *Comprehensive Plan for the National Capital* (the "Plan"). The Site is one of the designated Development Opportunity Areas in the Plan. The PUD helps carry out numerous goals and objectives regarding the development of housing and affordable housing in the District of Columbia. The PUD will advance at least six of the ten Major Themes of the Plan: "Stabilizing and improving the District's neighborhoods;" "Respecting and improving the physical character of the District;" "Preserving and promoting cultural and natural amenities;" "Preserving and ensuring community input;" "Providing for diversity and overall social responsibilities;" and "Promoting enhanced public safety."
 - (d) The scale of development and the existing R-5-A zoning are fully consistent with the land use designation of "Moderate Density Residential" on the Generalized Land Use Map of the Plan.
 - (e) The development plan exhibits attractive urban design, new landscaping, a 2.5-acre Urban Tree Park, environmental improvements and renewed street connections with the surrounding neighborhood. An improved street network will be created, and a balanced mixture of housing types and densities are proposed according to planning principles.
 - (f) The site plans, landscape plans and architectural plans exhibit a high quality of planning and urban design.

Office of Planning Report

25. By report dated January 3, 2006 and by testimony at the public hearing, the Office of Planning ("OP") recommended approval of the Application. "The Office of Planning finds that this Planned Unit Development meets the PUD evaluation standards outlined in § 2403 and is in accordance with the intent of the Zoning Regulations, the PUD process and the first-stage PUD. Therefore, the Office of Planning recommends approval of the PUD."

26. OP stated that, "The proposal is a very important residential development in furtherance of the District's aim to provide a variety of housing types for different income levels. The application is consistent with the requirements of the Zoning Regulations, elements of the Comprehensive Plan, and the Eastgate-Marshall Heights Neighborhood Alliance Master Plan."
27. OP cited public benefits including affordable housing, urban design and architecture, preservation of open space, an urban park, site plan, pedestrian access and First Source Employment and LSDBE commitments. The OP report also noted that the site is a designated Development Opportunity Area in the Land Use Element of the Comprehensive Plan, which provides additional policy support for the PUD project.

Reports of Other Agencies

28. The D.C. Department of Transportation, by report dated January 11, 2006, indicated that has no objection to the overall proposal, but recommended changes regarding driveway spacing and roadway design. "The proposed new roadways and alleys must be constructed to DDOT standards, as they will be public roads." DDOT offered to work with the applicant to ensure such compliance.
29. DDOT also expressed a policy of wider driveway spacing, shared driveways, or fewer driveways in the interest of allowing more curbside parking on the public streets. At the public hearing the Zoning Commission asked the Applicant to submit a post-hearing report on this and other issues. See "Contested Issues."

Advisory Neighborhood Commission 7E

30. Advisory Neighborhood Commission 7E voted to support the PUD project and testified in support at the public hearing and submitted a written report]

Public Testimony

31. Several individuals testified in support of the Application. There was no opposition testimony.

Contested Issue

32. The DDOT report recommended that driveway spacing be increased, or that fewer driveways or shared driveways be provided in order to increase curbside parking for visitors, delivery vehicles and overflow parking for residents.
33. In its post-hearing submission dated January 26, 2006, the Applicant responded as follows:
 - (a) There are 345 parking spaces available on the PUD site for 186 dwelling units, a ratio of 1.8 spaces per dwelling. These include regulation spaces in garages, parking spaces in driveways, plus 40 curbside spaces on streets.

- (b) Because of the ample parking provided, the curbside parking spaces on peripheral streets -- as proposed or if increased -- would only be needed very occasionally, typically when a resident has a large social gathering.
- (c) As stated by the Office of Planning at the public hearing, elimination of driveways will likely reduce total parking available. Typically, loss of a driveway eliminates the garage parking space and the driveway parking space, while creating only one additional curbside space.
- (d) The Applicant submitted four alternative driveway configurations reflecting implementation of DDOT's recommendations.
- (e) FedEx and UPS deliveries will occur only occasionally, and these vehicles park for very short periods of time. They will either park curbside (even if partially blocking a driveway for 1-3 minutes typically) or they will double park. This is what they do on neighborhood streets generally.
- (f) Typically, USPS mail delivery vehicles will park in one (or two) locations within a small community such as this, and the postal worker will handle deliveries on foot.
- (g) Although driveway spacing is relatively close:
 - 1) These driveways serve single-family dwellings (except for the two grand-home buildings) and thus will be sparsely used, unlike multi-family or commercial driveways.
 - 2) The visual effect will be softened by plantings of shade trees, ornamental trees, and shrubs as set forth in the Landscape Plan
- (h) The Zoning Regulations at § 2117.9 (b) explicitly authorize a waiver of any parking requirement for groups of three or more row dwellings where no rear access is feasible, the Applicant prefers to meet parking needs to the extent feasible within sound planning principles.

Conclusions of Law

1. The Planned Unit Development 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 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 Zoning 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 purposes of the Zoning Regulations and the Zoning Map of the District of Columbia and 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 residential uses are appropriate on this site, which is well served by a major arterial street, bus lines, and a nearby mass transit station. The impact of the project on the surrounding area will not be adverse, but rather will enhance and promote the revitalization of the area.
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. 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, 7E, testified in support of the Application.
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 stated herein, the Zoning Commission orders **APPROVAL** of the second-stage (final) PUD for property bounded generally by Fitch, F and 51st Streets, Queen's Stroll Place and Benning Road, S.E., specifically Lots 9-20 in Square 5318, Lots 20-36 in Square 5319 and Lots 29-36 in Square 5320. 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 __ in the record of this case, and as modified by the guidelines, conditions and standards of this order.

2. The project shall be developed with residential buildings, accessory parking and open space as depicted on the approved plans.
3. The maximum building height in the project shall be 35 feet and the maximum aggregate gross floor area shall be 0.80 FAR.
4. In accordance with the plans cited above, the approved PUD shall consist of a 186 dwelling units, distributed as follows by building type:

(a) Single-family detached dwellings	20
(b) Single-family Townhouses	158
(d) Grandhomes, with four units in each of the 7 buildings	8
Total dwelling units	186
5. Approximately forty percent (40%) of the dwelling units will be affordable to households having 60 percent or less of Area Median Income, and approximately twenty percent (20%) will be moderate-income units serving households having incomes between 60 and 80 percent of AMI, in accordance with the requirements of the public agencies providing financial subsidies for this purpose.
6. There shall be a minimum of 147 on-site parking spaces that conform to zoning standards, plus approximately 158 spaces in driveways and 40 curbside spaces as depicted on the plans, for a total of 345 parking spaces.
7. 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 significantly change the exterior configurations of the buildings;
 - (b) Make minor refinements to exterior details and dimensions needed to comply with the D.C. Building Code and the Americans with Disabilities Act ("ADA") or otherwise necessary to obtain a building permit;
 - (c) Erect an entry sign that is consistent with the design character of the development; and
 - (d) Vary the mix of apartment unit types by up to 10 percent.
8. The Urban Tree Park shall be located and designed generally as depicted in the landscape and Urban Tree Park plans in Exhibits ____ of the record. The approved plan is generalized in places in that specific plantings of trees and other plants, selective removal of trees and other horticultural actions will be decided by the Applicant's Landscape Architect in concert with other public and private entities assisting in the project, as documented in the record. In addition to the pedestrian

path depicted on the concept plan for the Urban Tree Park, the Applicant shall have the option, but not the requirement, of designing and creating a meandering path through the park, following a route that takes into account existing and proposed plantings, slope and other factors determined by the Applicant's design team.

9. The PUD project may be developed in phases.
10. The Applicant shall execute the following agreements prior to the issuance of a final order:
 - (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.
11. 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 Corporation Counsel 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.
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 Office of Zoning.
13. This final 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, the applicant shall file 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. Pursuant to D.C. Code § 1-2531 (1991), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified at D.C. Code, Title 1, Chapter 25 (1991). Nothing in this order shall be understood to require the Zoning Regulations Division of DCRA to approve permits if the applicant fails to comply with any provision of D.C. Law 2-38, as amended.

For the reasons stated above, the Commission concludes that the applicant has met the burden of proof, and it is hereby **ORDERED** that the applications be **GRANTED**.

Vote of the Zoning Commission taken at its public hearing of this case on February 9, 2006, by a vote of _____. The Zoning Commission took final action to adopt this order at its public meeting of _____, 2006 by a vote of _____.

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 _____.

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning