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ZONING COMMISSION
District of Columbia

CASE NO.

05-36C

EXHIBIT NO.

11

ZONING COMMISSION
District of Columbia
CASE NO.05-36C
EXHIBIT NO.11

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 05-36C

Z.C. Case No. 05-36C

Union Place I, LLC

(Modification to a Consolidated Planned Unit Development at 200 K Street, N.E.)

December 14, 2009

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on December 14, 2009. At the meeting, the Commission approved an application from Union Place I, LLC (the "Applicant") requesting a modification to an approved planned unit development ("PUD") in Square 749 bounded by 2nd, K, 3rd, and L Streets N.E., pursuant to Chapter 24 and the Consent Calendar Regulations of Chapter 30 of the District of Columbia Municipal Regulations ("DCMR"), Title 11, Zoning. Because the modification was deemed minor, a public hearing was not conducted.

The Commission determined that this modification request was properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations.

FINDINGS OF FACT

1. By Z.C. Corrected Order No. 05-36, the Commission on April 20, 2006, approved a consolidated PUD, first-stage PUD and related Zoning Map Amendment for the property located in the entirety of Square 749 bounded by 2nd, K, 3rd, and L Streets N.E. The consolidated PUD, located on the eastern portion of the site, is a residential building containing 212 residential units with ground-floor retail space. Pursuant to 11 DCMR § 3028, Z.C. Corrected Order No. 05-36 became final and effective upon publication in the *D.C. Register* ("DCR") on October 13, 2006.
2. Z.C. Corrected Order No. 05-36 requires the Applicant to set aside 30 residential units in the consolidated PUD as affordable units for eligible households with household incomes of no more than 80% of the Area Median Income ("AMI"), as adjusted annually by the U.S. Department of Housing and Urban Development. The affordable units were to be guaranteed by covenant between the Applicant and the District of Columbia, and the covenant was to be the same as the Draft Covenant submitted as Attachment 2 in the *Applicant's Post-Hearing Submissions, January 20, 2006*, revised only to provide the correct metes-and-bounds descriptions of the lots and parts of lots contained in the consolidated PUD.
3. The Applicant recorded the planned unit development and Affordable Housing Covenant ("Covenant") in the land records of the District of Columbia in the form approved by the Commission in Z.C. Corrected Order No. 05-36. The Covenant requires that the sale prices and terms or the rental rate, as applicable, of the affordable units shall be determined by the District of Columbia Department of Housing and Community Development ("DHCD") in accordance with regulations applicable to the District's Affordable Housing Program so as to assure that the monthly housing payment of the buyer or renter shall not exceed 30% of the buyer's or renter's monthly household income, as defined by DHCD.

4. The Applicant retained the consulting services of the Cultural Development Corporation to devise plans to attract artists as tenants of the affordable units in the consolidated PUD in furtherance of the Arts and Culture Element of the 2006 Comprehensive Plan and other District policies promoting the development of affordable housing for arts professionals.
5. DHCD notified the Applicant on October 15, 2009, that the Covenant would prohibit any consolidated PUD affordable-unit tenant from spending more than 30% of household income for housing cost.
6. The Applicant on October 29, 2009, submitted this request for minor modification of Z.C. Corrected Order 05-36 in order to permit the Applicant to amend the Covenant to allow consolidated PUD tenants to spend more than 30% of their monthly household income for housing cost if they choose to do so. The Applicant stated that the Covenant amendment is necessary to provide the flexibility to accommodate arts professionals, as well as other prospective tenants, whose household incomes may be less than 80% of AMI. The Applicant submitted a clarifying supplement to the request for minor modification on November 12, 2009.
7. The District of Columbia Office of Planning (“OP”), after reviewing the Applicant’s request, submitted an initial report on November 13, 2009, which concluded that the household income limitation in the Covenant is overly restrictive and that a Covenant amendment would be appropriate to permit the flexibility needed to accommodate arts professionals with fluctuating incomes. However, OP determined that the Covenant amendments proposed by the Applicant in the request for minor modification would not accomplish the intended purpose and would not satisfy the requirements of 11 DCMR § 3030 for Consent Calendar consideration as a minor modification.
8. On December 4, 2009, the Applicant submitted a revised request for minor modification with revisions of the proposed Covenant amendments to accommodate OP concerns and recommendations.
9. OP, after reviewing the Applicant’s revised request, submitted an additional report on December 8, 2009, which recommended that the Commission approve the Applicant’s request, with minor revisions to which the Applicant has agreed, as a minor modification.
10. OP stated at the Commission’s public meeting on December 14, 2009, that the revised Covenant amendments, as finally agreed upon by OP and the Applicant, accomplish the intended purpose and qualify as a minor modification. OP recommended Commission approval of amendments to strike the existing paragraphs 3 and 4 of the Covenant and replace them with the following new paragraphs 3 and 4:

“3. Affordable Housing-Household Eligibility Standards. Notwithstanding the fact that the Project is not subject to the Inclusionary Zoning Program (“IZ”) by virtue of its being set down for hearing prior to March 14, 2008, Developer covenants that during the

applicable control periods the affordable units shall be reserved for purchase by or rental to eligible households.

“Eligible households are defined as those households which as of the date of the sales agreement or as of the date of the initial lease, or any renewal or extension thereof, meet the following requirement:

“a. The household’s annual income, as certified in writing by DHCD or a certifying entity within the meaning of 11 DCMR § 2214, does not exceed 80% of the Area Median Income (AMI) for the Washington, D.C., Metropolitan Statistical area and adjusted for family size, as determined and published annually by the U.S. Department of Housing and Urban Development. For the purposes of determining a household’s “annual” income at the time of lease renewal or extension, “annual income” shall be the household’s income averaged over the household’s previous two years of income.

“b. For a for-sale unit, the household will not expend more than forty-one percent (41%) of its annual income on mortgage payments, insurance, taxes, and condominium and homeowner association fees for the applicable unit;

“c. For a rental unit, the household will not expend more than thirty-eight percent (38%) of its annual income on rent and utilities if not included in the rent for the applicable unit;

“d. Each household member will occupy or has occupied the unit as his or her principal residence; and

“e. The household has no ownership interest in any other housing or will divest such interest before closing on the purchase of, or signing the lease for, the unit.

“Except for the rental and price requirements of paragraph 4, no other requirement of IZ applies to the Project, unless “a new addition will increase the gross floor area of the entire development by fifty percent (50%) or more”, 11 DCMR § 2601.1 (c) (iii).

“4. Affordable Housing Unit Cost. Developer covenants that the sale price and terms or the rental rate, as applicable, of the affordable units shall be as follows:

“a) For a for-sale unit, the initial sale price shall be that stated for the applicable unit size in the Rent and Price Schedule in place on the date of the sales agreement. The price for a re-sale of any such unit shall be determined by DHCD pursuant to the formula set forth at 14 DCMR § 2218.

“(b) For a rental unit, the rental charge shall be that stated for the applicable unit size in the Rent and Price Schedule in place on the date the initial lease was executed or renewed or extended as applicable.

“For the purposes of this condition, the term “Rent and Price Schedule” means the rent and price schedule published in the D.C. Register pursuant to § 103(b) of the Inclusionary Zoning Act (D.C. Official Code § 6-1041.03(b)).”

11. The Applicant delivered copies of the request for minor modification and the clarifying supplement to Advisory Neighborhood Commission (“ANC”) 6C, which represents the area in which the consolidated PUD is located. On November 16, 2009, ANC 6C submitted a letter to the Commission stating that the ANC voted 5-0-0 to support the Applicant’s request at its regularly scheduled, duly-noticed monthly meeting on November 12, 2009. The Applicant served ANC 6C with copies of its revised request for minor modification on December 4, 2009; ANC 6C submitted no additional comments to the Commission.
12. On December 14, 2009, at its regular public meeting, the Commission reviewed the modification request as a Consent Calendar matter and granted approval of the minor modification to Z.C. Corrected Order 05-36. The Commission concurs with the Applicant and OP that the approval of the modification is appropriate and not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

CONCLUSIONS OF LAW

Upon consideration of the record in this application, the Commission concludes that the proposed modification is minor and is consistent with the intent of the previously approved Z.C. Corrected Order No. 05-36.

Further, the Commission concludes that its decision is in the best interests of the District of Columbia and is consistent with the intent, purpose, and integrity of the Zoning Regulations and Zoning Map.

The approval of the modification is not inconsistent with the Comprehensive Plan.

The proposed modification does not affect any of the other conditions to the approved PUD. The modification is minor such that consideration as a Consent Calendar item without public hearing is appropriate.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a minor modification of an approved PUD in Square 749, bounded by 2nd, K, 3rd, and L Streets N.E.

Condition No. 13 of Z.C. Corrected Order 05-36 is modified to read:

“13. The covenant required by Condition No. 6 shall be the Draft Covenant provided as Attachment 2 in the *Applicant's Post-Hearing Submissions, January 20, 2006*, revised **only** to provide the correct metes-and-bounds descriptions of the lots and parts of lots contained in the Consolidated PUD **and further revised as set forth in No. 10 of the Findings of Fact of Z.C. Order No. 05-36C.**”

Pursuant to the intent of 11 DCMR § 2409.3, this modification shall not become effective until a Notice of Modification of Z.C. Corrected Order No. 05-36 is filed in the Land Records of the District of Columbia. That Notice of Modification shall include true copies of Z.C. Corrected Order No. 05-36 and this Order (Z.C. Order No. 05-36C) which the Director of the Office of Zoning has certified. The recordation of the Notice of Modification shall bind the Applicant and any successors in title to construct on and use the PUD site in accordance with this modification order and any amendments thereof. Because the construction of the building is already under way, this minor PUD modification shall be fully vested upon the filing of the Notice of Modification.

After recordation of the Notice of Modification, the Applicant shall promptly file a certified copy of the Notice of Modification with the Office of Zoning.

On December 14, 2009, upon the motion made by Chairman Hood, as second by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating III, Konrad W. Schlater, Michael J. Turnbull, and Peter G. May to adopt).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become final and effective upon publication in the *D.C. Register*, that is, on March 5, 2010.