also indicated that the applicant has made substantial effort to reduce the proposed project's height and perceived bulk and has designed a structure that would he appropriate for the area in which it would be located.

21. The OP added, that the project would be an asset to the surrounding neighborhood and to the city as a whole. Accordingly, the OP recommended approval of the second-stage PUD and the related map amendment, subject to the following conditions regarding the development of the residential component of the project.

    a. The project may be developed in two phases with the office component being developed in the first-phase;

    b. Within one year of issuance of the certificate of occupancy for the office component, the AGC must apply for a building permit for the residential component; and

    c. Upon receipt of a building permit, the AGC must receive a certificate of occupancy for the residential component within two and one-half years.

22. The OP's report also contained the applicant's proposals that the enforcement of the above conditions be handled by the appropriate civil infractions official of the District government. That, any violations of the final PUD order be prosecuted in accordance with Section 2407.5 of the Zoning Regulations and Section 1229.1(c) of the civil infractions law, which specified that failure to comply with a Zoning Commission order will result in substantial fines.

23. Advisory Neighborhood Commission ("ANC") 2A, by letter dated July 26, 1993 and by testimony at the public hearing, supported the application. ANC 2A expressed satisfaction that AGC has made bona fide efforts to work with the community and to accommodate the community's concerns within its project.

24. There were no other persons or parties in support of or in opposition to the proposal either entered into the record or appearing at the public hearing.

25. At the conclusion of the hearing, the Commission finds that the proposed PUD is consistent with the requirements set forth in 11 DCMR Section 2400.

Board of Zoning Adjustment
District of Columbia
CASE NO.16701
EXHIBIT NO.27A2

26. The Commission finds that the proposed PUD will provide essential housing in the Downtown area and will act as a model for mixed-use development in this transition area between the high-density Central Employment Area and the residential Foggy Bottom neighborhood.

27. The Commission finds that the PUD project and map amendment from SP-2 to C-3-C are in conformance with the Land Use Element of the Comprehensive Plan which designates the site for high-density, commercial uses.

28. The Commission further finds that the proposed urban design approach of the project is consistent with the urban design element of the Comprehensive Plan and the tenets of the L'Enfant and McMillan Plans.

29. The Commission finds that the on-site parking spaces and loading facilities will adequately serve the commercial and residential components of the project. The Commission concurs with AGC's transportation expert that the proposed project will not have an adverse impact on the traffic network in the area.

30. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act.

31. NCPC, by letter dated November 4, 1993, indicated that the proposed action of the Zoning Commission to approve the PUD and related map amendment with conditions would not adversely affect the Federal interest in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The Planned United Development process is appropriate means for controlling development of the site in a manner consistent with the best interests of the District of Columbia.

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

3. The development of the project is compatible with District-wide and neighborhood goals, plans and programs and is sensitive to environmental protection and energy conservation.

4. The approval of this application is not inconsistent with the Comprehensive Plan for the National Capital because it will produce needed housing, be a catalyst for redevelopment in a transition area, strengthen the distinguishing physical characteristics of the area, and increase employment opportunities.

5. The approval of the application is consistent with the purposes of the Zoning Act and the Zoning Map of the District of Columbia, which includes stabilizing land values and improving mixed-use areas.

6. The application can be approved with conditions which ensure that the development will not have an adverse affect on the surrounding community or the District. The project will enhance and promote the revitalization of the area.

7. The approval of this application will promote orderly development in conformity with the entirety of the District of Columbia Zone Plan as embodied in the Zoning Regulations and Map of the District of Columbia.

8. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

9. The Zoning Commission has accorded ANC 2A the "great weight" consideration to which it is entitled.

DECISION

In consideration of the Findings of Fact and Conclusions of Law, the Zoning Commission for District of Columbia hereby orders approval of the second-stage PUD and an amendment to the Zoning Map from SP-2 to C-3-C, for Square 122, Lot 835 subject to the following guidelines, conditions and standards:

1. The planned unit development (PUD) shall be developed in accordance with the plans prepared by the architectural firm of Florance, Eichbaum, Esocoff and King, and marked Exhibit No. 5B of the record and as modified by the following guidelines, conditions and standards.

2. The PUD site shall be developed with mixed-use buildings, including residential and commercial uses with below-grade parking.

3. The floor area ratio (FAR) for the PUD project shall not exceed 7.96, of which not more than 5.79 FAR shall be devoted to commercial use and not less than 2.17 FAR shall be devoted to residential use.

4. The height of the PUD project shall not exceed one hundred and seven feet (107'), exclusive of the penthouses as shown on Exhibit No. 5B. That portion of the building which exceeds a height of ninety-four (94) feet shall be setback from the 19th, 20th and E Streets property lines at least 20 feet.

5. The mechanical penthouses shall be developed as shown on Exhibit No. 5B and shall not exceed eight feet in height above the parapet of the roof of the office component.

6. The PUD project shall be developed with 47 to 56 residential units.

7. There shall be a minimum of 200 on-site parking spaces with at least one parking space designated for each residential unit. Additional parking spaces may be permitted in public vaults.

8. Loading areas, driveways and walkways shall be located on the site as shown on Exhibit No. 5B of the record.

9. Landscaping shall be provided as shown on the landscape plan marked as Exhibit No. 5B of the record.

10. Antennas shall be permitted on the roof of the building subject to the applicable Zoning Regulations.

11. The entire PUD project may be developed in two phases; that is, the residential component being one phase and the office component being the other phase.

12. If the PUD project is developed in one phase or if the residential component is developed in the first phase, the requirements as contained in Condition Nos. 13 and 14 of this order, shall not apply.

13. If the office component is developed in the first phase, the applicant must apply for a building permit for the residential component within one year of the issuance of the certificate of occupancy for the office component. Upon receipt of the building permit for the residential component, the applicant must receive a certificate of occupancy for the residential component within 2 1/2 years of receipt of the building permit for the residential component.

14. The applicant shall promptly file with the Office of Zoning (OZ) a copy of the certificate of occupancy for the office component, a copy of the building permit application for the residential component, and a copy of the certificate of occupancy for the residential component. Each of the aforementioned copies shall include a cover letter that clearly indicates the date on which the certificates of occupancy were issued by the Department of Consumer and Regulatory Affairs (DCRA) as well as the date on which the building permit application for the residential component was made with DCRA.

15. The applicant shall have the flexibility on the final detailing of the proposed project to:

    a. Vary the number of residential units to allow for larger or smaller units, in response to market conditions, so long as there are not less than 47, nor more than 56, residential units at the site with no reduction in the gross square footage devoted to residential use;

    b. Change the location and design of all interior components including partitions, structural slabs, doorways, hallways, columns, stairways, location of elevators and electrical/mechanical rooms, so long as the variations do not change the exterior envelope of the building including the penthouse;

    c. Make minor adjustments in the window detailing, including the flexibility to shift the location of entrance doors on the ground floor to accommodate tenant uses;

    d. Make minor design changes in response to requirements and final approval of the Commission of Fine Arts;

    e. Provide not more than 5,000 square feet of ancillary, retail space on the ground floor of the project; and

    f. Change the location and types of parking spaces provided, increase the number of spaces provided and make other modifications to below-grade space to accommodate the needs of office tenants, residential tenants and handicapped persons, including the potential elimination of a level of commercial parking without reduction of the total number of required spaces.

16. No self-illuminated signs shall be permitted. Other illuminated signs lit indirectly from ground-mounted or building-affixed lighting shall be permitted. Any signs affixed to the

building must be at the first or second floor level, not larger than twenty-four inches (24") in height and subject to review and approval by the Commission of Fine Arts. Inscriptions in the stone or precast concrete materials of the facades may occur elsewhere and are subject to review and approval by the Commission of Fine Arts.

17. No building permit shall be issued for the PUD project until the applicant has recorded a covenant in the land records of the District of Columbia, between the owner and the District of Columbia, satisfactory to the Office of Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). The covenant shall bind the owner and all succesors in title to construct on and use the property in accordance with the order and amendments thereto of the Zoning Commission.

18. The change of zoning from SP-2 to C-3-C for the PUD site shall be effective upon recordation of the PUD covenant as required by 11 DCMR 2407.

19. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the applicant has filed a certified copy of said covenant with the records of the Zoning Commission.

20. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of the order. Within such time, the applicant must file for a building permit as specified in 11 DCMR 2407.1 and 2406.8. Construction shall start within three years of the effective date of the order.

21. Pursuant to D.C. Code Section 1-2531 (1987), 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 as D.C. Code, Title 1, Chapter 25, (1987), and the order would be conditioned upon full compliance with those provisions. Nothing in the order shall be understood to require the Zoning Division of DCRA to approve permits if the applicant fails to comply with any provisions of D.C. Law 2-38, as amended.

Vote of the Zoning Commission taken at the public meeting on September 13, 1993: 5-0 (John G. Parsons, Jerrily R. Kress, William L. Ensign, William B. Johnson and Maybelle Taylor Bennett - to approve with conditions).

This order was adopted by the Zoning Commission at the public meeting on November 15, 1993 by a vote of 5-0: (Jerrily R. Kress, John G. Parsons, William L. Ensign, Maybelle Taylor Bennett and William B. Johnson, to adopt as corrected).

In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on DEC 10 1993.

MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission

MADELIENE H. ROBINSON
Director
Office of Zoning

zco746/VCE/LJP

Government of the District of Columbia
ZONING COMMISSION

ZONING COMMISSION ORDER NO. 746-A
Case No. 93-5F/91-18P
(PUD and Map @ 1957 E Street, N.W.
March 11, 1996

By Z.C. Order No. 746 dated November 15, 1993, the Zoning Commission granted approval of an application from the Associated General Contractors of America (AGC) for a second-stage planned unit development (PUD) and an amendment to the Zoning Map from SP-2 to C-3-C for Lot 835 in Square 122 located at 1957 E Street, N.W. pursuant to the provisions of Chapter 24 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning.

The PUD approval was for the construction of a mixed-use building, including residential and commercial uses with below grade parking for 200 cars. The PUD will be the site of the new AGC headquarters. The PUD project would have a maximum floor area ratio (FAR) of 7.96 of which not more than 5.79 FAR will be devoted to commercial use and not less than 2.77 FAR will be devoted to residential use.

Z.C. Order No. 746 became final and effective on December 10, 1993. The validity of that order was for two years; that was until December 10, 1995, provided application for a building permit was filed within that period of time, after which construction would have to start by December 10, 1996.

Pursuant to 11 DCMR 2406.10 of the Zoning Regulations, the Commission may extend the validity of the PUD approval for good cause shown upon a request made before the expiration of the approval.

By letter dated November 13, 1995, counsel on behalf of the AGC, filed a request to extend the validity of the previously approved PUD for a period of two years.

This letter indicated that the basis for an extension of the validity of the PUD is as follows:

> "Unfortunately, the real estate recession in the area and the unavailability of financing for the project without a substantial pre-leasing commitment from another office user (in addition to the AGC) makes it impossible for the applicant to proceed at the present time. The applicant

has retained a well regarded local commercial broker to seek such additional tenants for the project. Since the approval of the PUD, the AGC (through its brokers) has actively solicited both private and federal tenants for the portion of the new office building which will not be for the AGC's own use. The applicant will proceed as expeditiously as possible as soon as tenant commitments and financing can be secured."

By memorandum dated November 29, 1995, the District of Columbia Office of Zoning (OZ) referred this matter to the District of Columbia Office of Planning (OP) for an analysis of whether any amendments to the Zoning Map or Regulations, or to the Comprehensive Plan, since the Zoning Commission initially decided the case will affect the request.

By memorandum dated December 29, 1995, OP recommended that the applicant's request be granted and stated that no purpose would be served in this instance by denying the request. OP indicated the following:

"The zoning classification applicable to the site has not changed since the PUD was originally approved in November 1993. The Comprehensive Plan Amendments Act of 1994, effective October 6, 1994, changed the land use classification of the site from high-density commercial to medium-density commercial and high-density residential. The Comprehensive Plan Amendments Act is consistent with the Commission's previously approved mixed-use PUD for the site.

The applicant has stated that it has invested a great deal of time and money through a commercial broker to seek the additional tenant(s) necessary to secure financing. That search has been unsuccessful to date. In short, the present request for a time extension is the result of current adverse market conditions.

The Zoning Commission has the authority to approve PUD time extensions. In the Office of Planning's opinion, no purpose would appear to be served by denying the requested extension. Accordingly, the Office of Planning recommends that the Zoning Commission grant a two-year extension of Order No. 746, pursuant to Subsection 2406.10 of 11 DCMR."

On February 12, 1996, at its regular monthly meeting, the Zoning Commission considered the request of counsel for AGC and the OP report.

The Zoning Commission concurs with the OP and the applicant. The Commission also determined that an extension of time of the validity of this PUD is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby ORDERS that the validity of Z.C. Order No. 746 be EXTENDED for a period of two years; that is until December 10, 1997. Prior to the expiration of that time, the applicant shall file for a building permit, as specified in 11 DCMR 2406.8. Construction shall start within one year; that is not later than December 10, 1998.

Vote of the Zoning Commission taken at the public meeting on February 12, 1996: 4-0 (Maybelle Taylor Bennett, John G. Parsons, Jerrily R. Kress and Herbert Franklin, to approve a two-year PUD extension).

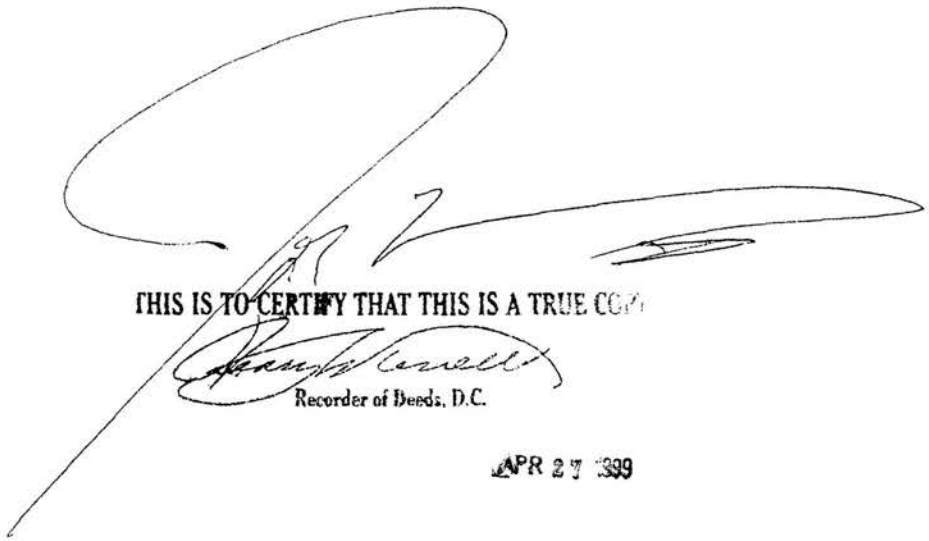
This order was adopted by the Zoning Commission at its public meeting on March 11, 1996 by a vote of 4-0: (Jerrily R. Kress, John G. Parsons and Herbert M. Franklin, to adopt; Maybelle Taylor Bennett, to adopt by absentee vote; Howard Croft not present, not voting).

In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on MAR 29 1996.

JERRILY R. KRESS
Chairperson
Zoning Commission

MADELIENE H. DOBBINS
Director
Office of Zoning

zco746-A/SDB/LJP



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Recorder of Deeds, D.C.

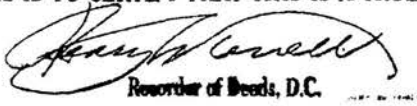
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RETURN TO:
PAUL TUMARKIN, ESQ. & LANE
WILKES & ARTIS, P.L.L.C.
1666 K STREET, N.W. #1100
WASHINGTON, D.C. 20006

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Recorder of Deeds, D.C.

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Government of the District of Columbia
ZONING COMMISSION





ZONING COMMISSION ORDER NO. 638
CASE NO. 88-32C
(PUD & MAP GRAMERCY)
NOVEMBER 13, 1989

Purusant to notice, a public hearing of the Zoning Commission of the District of Columbia, was held on June 1, 1989. At this hearing, the Zoning Commission considered an application from Rhode Island Associates Limited Partnership for consolidated review and approval of a Planned Unit Development and related map amendment, pursuant to Sections 2400 and 102 of the District of Columbia Municipal Regulations (DCMR), Title 11 Zoning. The public hearing was conducted in accordance with provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. The original application, which was filed on October 24, 1988, requested consolidated review and approval of a PUD and related map amendment from SP-2 to C-4 for Lot 824 in Square 182. That application requested approval of a 13-story building consisting of 10 floors of office/retail use and 3 floors of residential use. The total floor area ratio (FAR) for the project was 10.5, of which 8.2 was devoted to office/retail use. The proposed height of the project was 130 feet.

2. The application was subsequently revised on March 30, 1989, in response to a suggestion of the Office of Planning (OP) to decrease the height and bulk of the project. The revised application called for a 10 story building consisting of 8 floors of office/retail use and 2 floors of residential use. The height of the project was reduced from 130 feet to 104 feet and the FAR reduced from 10.5 to 8.5.

3. The PUD site is located at 1616 Rhode Island Avenue, N.W., in an SP-2 zone district, contains a total land area of 32,645 square feet, and presently consists of a vacant hotel. The hotel was formerly known as the Gramercy Inn and built to a height of 90 feet and an FAR of 6.0.

4. The PUD site is located in Ward 2 in the northwest quadrant of the District of Columbia, near the intersection of Rhode Island Avenue, N.W. and Massachusetts Avenue, N.W., diagonally across from Scott Circle.

5. The SP-2 District permits matter-of-right medium density development including all kinds of residential uses, with limited offices for non-profit organizations, trade associations and professionals permitted as a special exception requiring approval of the BZA to a maximum height of sixty-five feet, a maximum floor area ratio (FAR) of 6.0 for residential and 3.5 for other permitted uses, and a maximum lot occupancy of eighty percent for residential uses.

6. The C-4 District is the downtown core, comprising the retail and office centers for both the District of Columbia and the metropolitan area, and allows office, retail, housing and mixed uses to a maximum height of 110 or 130 feet, a maximum lot occupancy of one hundred percent, and a maximum FAR of 8.5 or 10.0, with the maximum height and FAR dependant upon the width of adjoining streets.

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

8. The District of Columbia generalized Land Use Element Map of the Comprehensive Plan for the National Capital includes the PUD site in an area included in the high density commercial land use category.

9. The area surrounding the PUD site contains a wide variety of land uses. Major office and retail development is located to the south of the site while moderate and high density residential development is located to the north. Adjacent to the PUD site on the east and west are office buildings which house the B'nai B'Rith International and the National Rifle Association, respectively. Both buildings are 90 feet in height with FARs of 6.0 and 7.6, respectively. To the south of the site is the Sumner-Magruder School office complex, built to a height of 100 feet.

Directly to the north is a Holiday Inn hotel and U.S. Reservation No. 62.

10. The applicant, by written statements and by testimony presented at the public hearing, indicated that project will be of a single, 10-story above-grade structure. The building will consist of 277,900 square feet of gross floor area and a total FAR of 8.5, of which 6.9 FAR will be devoted to commercial uses. The total lot occupancy will not exceed 93 percent. The height will be revised to 106 feet, which would allow the ground floor retail uses to be at grade, in lieu of 2 feet below grade.

11. The residential component of the project, located on floors 9 and 10, will consist of 52 rental units, or no less than 48 rental units. The apartment lobby will be entered through a separate entrance, located at the corner of the site closest to 16th Street on Rhode Island Avenue, N.W. The commercial component, located on floors 1-8, will be entered at the center of the building along the Rhode Island Avenue frontage. The retail component of the project will be located on a portion of the ground floor.

12. The applicant, through its developer, indicated that the following amenties package would apply:

    a. New Rental Housing Units Downtown

       The project will provide rental housing units in the Downtown. The proposed development will include approximately 52 apartments with excellent views of the monumental core of the District. Since housing development must be subsidized, a matter-of-right development on the site would not create housing at this Downtown location within the Central Employment Area.

    b. Replace a Vacant Commercial Use

       The development of a mixed-use residential/commercial project, including approximately 52 rental units, will replace a former hotel, now vacant and deteriorating, with a mix of uses that is compatible with surrounding land uses and consistent with the land use patterns and zoning classifications for the area.

    c. Federal Parkland

       The applicant provided, in its post hearing submission, that the applicant will contribute $75,000 to the National Park Service to be

earmarked toward the cost of maintenance and improvements of U.S. Reservations 62, 63 and 64 located across from the project site. The applicant indicated that this contribution would be made in 3 annual payments of 25,000 with the first payment to be made prior to the issuance of the building permit for the project.

d. Urban Design

The proposed structure will be compatible with existing buildings in the vicinity of the site. The articulated facade will add prominence to a segment of Rhode Island Avenue that is relatively bland in character. The proposed landscaping will enhance the aesthetic quality of the area and create an attractive environment for people in the neighborhood.

e. Revenue for the District

The residential, retail and commercial components of the development will generate revenue for the District. It is anticipated that the annual real estate taxes on the completed development will be approximately $1,200,000. Additional employment, sales and other avenue sources will provide additional dollars for the District.

f. Employment Opportunties

The mixed-use development will create temporary construction jobs and permanent jobs for District residents. It is anticipated that up to 48 full-time and 70 part-time permanent jobs will be created for the retail space, 6 full-time and 12 part-time jobs for the commercial space and 7 jobs for the residential component of the development. The applicant will enter a First Source Employment Agreement to target qualified District residents, especially those in Ward 2, for employment at the site.

g. Minority Business Opportunities

The applicant will work with the Minority Business Opportunity Commission and will enter into a Memorandum of Understanding to provide minority opportunities at all phases of the development.

h. The applicant will contribute $50,000 to the John W. Ross Elementary School at 1730 R Street, N.W. to assist in funding the renovation of the school.

13. The applicant, through testimony, indicated that the economic feasibility of the project, through the use of pro forma documentation, is "very tight", especially when considering the risk involved in developing a "stacked" commercial/residential building downtown. He indicated that any reduction in the amount of commercial space would make the project less economically attractive than re-establishing a hotel use on the site.

14. The applicant, through its expert in architecture and planning, testified that the proposed project was in conformance with the high density commercial use designation of the site in the Comprehensive Plan Generalized Land Use Map and fostered the urban design elements of the Comprehensive Plan. He explained that the project will replace a vacant, deteriorating hotel with a high-quality, functionally efficient and attractively designed building.

15. The applicant testified that the project was in conformance with the applicable zoning regulations for the C-4 zone with respect to height, density, parking and lot occupancy. He indicated, however, that two minor deviations from the Zoning Regulations, regarding the rear yard requirement and the loading requirement, are requested by the applicant as part of the PUD approval.

16. He testified that due to the narrowness of the alley system surrounding the site, it would be impractical to provide a 55 floor loading berth in the building, as required by the Regulations for apartment buildings greater than 50 units. He indicated that since the project is designed to accommodate 52 apartments, it would technically be required to provide a 55' loading berth. This berth could be provided, but it would not be useable because of the constraints of the existing alley system. In lieu, therefore, the project provides an additional, useable 30-foot berth.

17. With regard to the rear yard issue, the applicant indicated that the project provides a 27 foot rear yard, 6 feet less than would be required based on the height of the building. He further indicated that the office component of the project requires an 18-foot rear yard, only a 1 foot differential from what is provided. The configuration of the apartment units, however, U-shaped around the recreational space, provided more light and air than would be provided by the strict application of the Regulations.

18. The applicant testified that the height of the project had been carefully examined so as to minimize any

potential impact on the surrounding properties. He explained that the ground level of the project is proposed to be two feet below grade. He indicated that the residential floors could not be lowered any more without creating apartments that would front office building windows a mere ten feet away. He believed that the building height has been reduced to its minimum. He also indicated that the residential floors have been set back, reducing the apparent height of buildings as seen from the street below.

19. The height of the penthouse, after a lengthy study, has been reduced to 16' 6", two feet less than a typical penthouse and is .17 FAR; less than half the size of a typical penthouse.

20. The applicant requested that flexibility be granted in the final design of the PUD project for the following:

    a. The right to reallocate space between apartment units to provide less than 52 larger units, in response to market conditions;

    b. The right to change the number and location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, location of elevators, electrical and mechanical rooms, so long as the variations do not change the exterior configuration of the building including the penthouse;

    c. The right to make minor adjustments in the facade window detailing, including the flexibility to shift the location of the doors of the retail uses on the ground floor;

    d. Flexibility in the final location and type of exterior lighting fixtures;

    e. Flexibility in the final selection of the exterior materials within the color ranges and material types proposed, based on availability at the time of construction;

    f. The right to change the number and location of the types of parking spaces provided and other modifications to the below-grade space to accommodate the needs of the apartment residents, retail users, office tenants and handicapped persons, including the deletion of one level of parking spaces as long as at least 177 parking spaces be provided on-site within the parking garage of the project; and

g. The right to vary the amount of retail/office space provided in the project, depending on market conditions.

21. The applicant, through a representative of its traffic consultant, testified at the public hearing that the proposed PUD would not change the current levels of traffic service in the area. The testimony further concludes that the provision of a 55 foot loading berth within the project would be unwarranted. The report of the traffic consultant indicates that an additional 30-foot berth in lieu of the 55-foot berth would provide adequate service to the project.

22. The District of Columbia Office of Planning (OP), by memorandum dated May 15, 1989 and by testimony presented at the public hearing recommended approval of the application, subject to general agreement on the amenities package.

23. OP indicated that the proposed building is expected to have little adverse impact on the surrounding transition zone, particularly now that it has been scaled back from 130 feet in height to 104 feet. That height has been further mitigated by setting back the upper floors, continuing the visual sense of the adjacent 90 foot height with an important awning design element and minimizing the visibility of the penthouse with a major setback and reduction in size and with the selection of materials. The office use would be lower in height than the office use in the adjacent buildings. The project would bring an important transition use (residential) in its upper floors to the critical transition zone along Rhode Island Avenue.

24. OP further indicated that the most important amenity in this project is the proposed configuration of the mix of uses. The common wisdom in mixed-use development is that residential and commercial uses cannot be stacked successfully. This conclusion greatly reduced the flexibility in achieving mixed-use projects, particularly on small sites where there is not enough room for two buildings. If the proposed configuration does work, the lights will be on in the upper two floors long after the offices below have gone dark, providing a friendly presence or beacon, among office buildings. It if works well, it will provide an important new model for mixed-use development throughout the District of Columbia.

25. The District of Columbia Department of Public Works (DPW), by memorandum dated June 5, 1989, concluded or recommended the following:

a. That the anticipated traffic generated by the PUD project would not adversely affect the surrounding transportation system;

b. That on-site parking accommodations are more than adequate;

c. That the applicant provide more information that justifies its need to provide a 30 foot loading berth, in lieu of the required 55 foot loading berth;

d. That the public alleys to the east and south of the PUD site be widened by five feet;

e. That the water supply service to the PUD site is adequate;

f. That the combined sewer stormwater service for the PUD site is adequate for sanitary waste but inadequate for stormwater runoff; and

g. That the PUD project will have to comply with Section 509 of District of Columbia Law 5-188, which establishes requirements and procedures to control stormwater runoff.

26. The District of Columbia Fire Department (DCFD), by memorandum dated May 5, 1989, objects to the proposal, as originally filed. The DCFD stated that a fire in a building such as proposed can adversely affect the emergency operations of the Fire Department. Factors to be considered are type of construction, type of fire, location of fire within, means for the spread of fire, occupancy/use, Fire Department access, and the most important factor, whether people have to be rescued.

27. The DCFD indicated that its review of the proposal for construction of a 130 foot mixed used building with all residential units above 90 feet in height as listed in the application appears to create major and undue hardships on the daily operations of the Fire Department. The overall height extension as proposed exceeds the rescue capability of Fire Department aerial ladder trucks (limited to 100 ft. at a 70 ft. climbing angle) currently assigned to protect Square 182.

28. The District of Columbia Department of Recreation (DOR), by memorandum dated May 8, 1989, expressed concern that the applicant's amenity to improve the grounds of U.S. Reservation No. 62 (Daniel Webster Park) was of minimal value to the city. DOR recommended, as a supplement to the applicant's

previous proffer, an open space/landscaping plan for the street-level area and, for the benefit of the apartment residents, a roof-top landscape plan that includes but is not limited to tree planters and seating areas.

29. The District of Columbia Metropolitan Police Department (MPD), by letter dated May 16, 1989, offered no objection to the application and indicated that the proposal will not generate an increase in the level of police services.

30. The District of Columbia Public Schools (DCPS), by memorandum dated May 16, 1989, expressed no opposition to the application and indicated that the residential component of the proposal would not be anticipated to adversely affect school enrollment.

31. Advisory Neighborhood Commission (ANC) 2B, by letter dated May 31, 1989, supported the proposal; subject to the following conditions:

    a. At least one parking space shall be assigned to each apartment unit (48 units minimum);

    b. No less than top two floors shall be devoted to bona fide, non-transient residential use;

    c. All residential lease terms shall be for a minimum of 12 months;

    d. No room service nor hotel-type services shall be provided to the residential occupants;

    e. No apartment or room shall be leased on a time sharing basis, nor used as a hotel, motel, boarding house or private club, including fraterity or sorority facility;

    f. No apartment or room shall be leased to any corporation, partnership, association, joint venture, government agency, trust, or estate, nor to anyone acting for or on behalf of such entity; and

    g. The applicant shall provide funding or in-kind services for the following improvements at the Ross Elementary School:

        (1) Attic Renovation;
        (2) Basement Renovation;
        (3) Window Replacement;
        (4) Playground Resurface;

(5) Fencing repair; and
(6) Replacement of pipes.

32. The National Rifle Association (NRA), party in the proceedings, by letter dated May 11, 1989 and by testimony presented at the public hearing, opposed the application because of potential of the common public alley between the PUD site and the NRA being closed during construction of the PUD. NRA stated that the present alley has a significant volume of delivery traffic, garage traffic and short-cut traffic, and must remain open to prevent a hardship on the NRA and others that use the alley for deliveries, trash pick-up, and access to parking.

33. Testimony from persons in opposition to the proposal was received from the Dupont Circle Citizens Association and B'Nai B'rith. Issues of concerns included but not limited to the height of the proposal in excess of 90 feet, an FAR in excess of 7.0, and the potential inability to use the alley between the PUD site and B'nai B'rith during construction of the PUD.

34. The principal of Ross Elementary School, by letter dated May 30, 1989, submitted a list of major repair or improvement needs of the school with related cost estimates associated thereto.

35. The Zoning Commission concurs with the general position of OP, ANC-2B, and the applicants and believes that the PUD proposal is an appropriate development for the PUD site.

36. As to the concerns of ANC-2B, and others regarding parking, residential leasing, transiency, and the contribution to Ross Elementary School, the Commission believes it has adequately addressed the aforementioned in its decision.

37. The Commission concurs with the general position of DPW and the applicant, and finds that the PUD proposal would not adversely affect the surrounding transportation system, that the provided on-site parking is adequate, that the substitution of a 30 foot loading berth in lieu of the required 55 foot loading berth is reasonable and adequate, and that the widening of the existing adjacent alleys has been adequately addressed.

38. As to the concerns of DPW regarding stormwater runoff, the Commission believes that this concern would be addressed and resolved through the permit review process.

39. The Commission believes that the ground floor of the project should remain at grade level with a corresponding increase in the height of building of 2 feet. The Commission finds that this minor increase in height will not have an adverse impact on the surrounding neighborhood.

40. As to the concerns of DCFD regarding the fire protection of residential units above 90 feet, the Commission is mindful that the revised application reduced the PUD building height from 130 feet to 106 feet. The Commission finds that the residential floors of the project can adequately be protected from fire, pursuant to applicable regulations, including the use of sprinkler systems.

41. As to the concern of DOR regarding residential recreation space, the Commission believes that it has adequately addressed the matter in its decision.

42. As to the concerns of the NRA and others regarding the temporary closing of the alleys, and not structurally damaging neighboring properties, the Commission is mindful that it has no jurisdiction in these matters but believes that applicable procedures and regulations will be applied as is done in matter-of-right development.

43. As to the concern regarding security, the Commission finds that the security measures are no more adversely affected as a result of the PUD proposal than they would be affected by the existing building and the previous hotel use on the PUD site. The Commission, in fact, believes that the alley setback requirements that are included herein, may lessen the security concerns for neighboring owners of property.

44. The Commission finds that the applicants have met the intent and purpose of the Zoning Regulations and further finds that the proposal is suitable for the site, and that the design, height, density, and scale are compatible with the subject neighborhood.

45. 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-Governmental and Government Reorganization Act. The NCPC, by report dated September 7, 1989, indicated that the proposed action of the Zoning Commission would not adversely affect the Federal establishment or other Federal interests in the National Capital or be inconsistant with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate means of controlling development of the subject site, because control of the use and site plan is essential to ensure compatibility with the neighborhood.

2. The development of this PUD carries out the purposes of Chapter 24 to encourage the development of well-planned residential, commercial and mixed-use developments which will offer a variety of building types with more attractive and efficient overall planned and design not achievable under matter-of-right development.

3. The development of this PUD is compatible with city-wide goals, plans and programs, and is sensitive to environmental protection and energy conservation.

4. Approval of this application is not inconsistent with the Comprehensive Plan for the National Capital.

5. The approval of this application is consistent with the purposes of the Zoning Act.

6. The proposed application can be approved with conditions which ensure that the development will not have an adverse affect on the surrounding community, but will enhance the neighborhood and ensure neighborhood stability.

7. The approval of this application will promote orderly development in conformity with the entirety of the District of Columbia zone plan, as embodied in the Zoning Regulations and Map of the District of Columbia.

8. The Zoning Commission has accorded to the Advisory Neighborhood Commission 2B the "great weight" consideration to which it is entitled.

9. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of this application for consolidated review of a Planned Unit Development ("PUD") and change of zoning for lot 824, in Square 182 located at 1616 Rhode Island Avenue, N.W. The approval of this PUD is subject to the following guidelines, conditions and standards:

1. The Planned Unit Development ("PUD") shall be developed in accordance with the plans prepared by the Weihe Partnership Architects marked as Exhibits No. 20B and 24 of the record as modified by the guidelines, conditions and standards of this Order.

2. The PUD site shall be developed with a mixed use structure which will contain a mixture of residential, retail and office uses.

3. The floor area ratio (FAR) of the building shall not exceed 8.5 of which a maximum of 6.86 FAR shall be devoted to office/retail use, and a minimum of 1.64 FAR shall be devoted to residential use.

4. The height of the building shall not exceed one hundred six (106) feet.

5. The total lot occupancy of the project shall not exceed ninety-three percent (93%) of the site.

6. The project shall be developed with not less than forty-eight (48) residential units on floors 9 and 10 of the project. The total number of residential units on the two floors shall not exceed fifty-two (52).

7. The applicant may combine space in the residential units of the development to create larger apartments in response to market conditions.

8. At least 9,000 square feet of floor area at the street level of the building shall be devoted to retail uses.

9. There shall be minimum of 125 on-site parking spaces for the commercial uses in addition to which there shall be not less than one assigned parking space for each residential unit, designated for use by the residential tenants. The applicant may provide additional parking in the vault space as shown on Exhibit No. 24 of the record.

10. Recreation space shall be provided on the 9th floor of the building as shown on Exhibit No. 24 of the record.

11. No hotel, motel, boarding house and private club uses or activity of any kind, either open or covert shall be conducted or permitted on floors 9 and 10 of the project, and no portion of these two floors shall be converted to any such use or activity.

12. All leases for the residential units shall be for a minimum of 12 months.

13. No residential unit shall be leased to any corporation, partnership, association, joint venture, government agency, trust, estate, or the like.

14. Loading areas, driveways, and walkways shall be located on the site, as shown on Exhibit No. 24 of the record.

15. Landscaping shall be provided as shown on Exhibit No. 24 of the record.

16. The applicant shall have flexibility with respect to the following matters:

    a. Varying the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, location of elevators, and electrical and mechanical rooms, provided the variations do not change the exterior configuration of the building including the penthouse;

    b. Making minor adjustments in the facade, window and balcony detailing, including the flexibility to shift the location of the doors to the retail uses on the ground floor and vary the type of paneling used on the retail frontage in order to accommodate the different types of retail uses, provided that the applicant shall submit the aforementioned to the Zoning Commission for final approval which the Commission may determine to grant without having a further public hearing.

    c. Varying the location and type of exterior lighting fixtures.

    d. Varying the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at time of construction, provided the applicant shall submit the aforementioned to the Zoning Commission for final approval which the Commission may determine to grant without having a further public hearing.

    e. Varying the species but not the size of plant materials;

17. The Zoning Commission reserves the discretion to determine the proceedings by which it will consider any matter submitted to it pursuant to Paragraphs b and d of Condition No. 16 of this Order.

18. The applicant shall relinquish 2 1/2 feet setback at the right-of-way lines of the alleys to the east and west of the PUD site for a height of not less than

two (2) stories. Such setback areas shall be improved at the alley level to allow for unobstructed vehicular use for public purposes.

19. The applicant shall execute a binding agreement with the D.C. Board of Education or D.C. Public Shools, which provides that the applicant shall contribute a minimum of $150,000.00 towards the renovation or repairs of the John W. Ross Elementary School.

20. The applicant shall enter into a Memorandum of Understanding with the Minority Business Opportunity Commission, which requires the applicants to make a bona fide effort toward at least thirty-five (35) percent of the construction related contracts for the project to certified minority business enterprises.

21. The applicant shall enter into a First Source Agreement with the Department of Employment Services ("DOES") which provides that the applicant will use DOES as its first source for the recruitment, referral and placement of employees in connection with the construction of the project.

22. The change of zoning from SP-2 to C-4 for lot 824 in square 182 shall be effective upon recordation of a PUD convenant, pursuant to 11 DCMR 2407.3

23. No building permit shall be issued for the site until the applicant has recorded a covenant in the land records of the District of Columbia between the owner and the District of Columbia satisfactory to the Office of Corporation Counsel and the Zoning Regulation Division of the Department of Consumer and Regulatory Affairs (DCRA). The covenant shall bind the owner and all successors in title to construct on and use of the property in accordance with this Order and amendments thereto of the Zoning Commission.

24. The Zoning Secretariat shall not release the record of this case to the Zoning Regulations Division of the DCRA until the applicant has filed a certified copy of said covenant with the records of the Zoning Commission.

25. 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 must be filed for a building permit as specified in Subsection 2407.1 DCMR Title 11. Construction shall start within three years of the effective date of this Order.

26. Pursuant to D.C. Code Sec. 1-2531 (1987), 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 2038, as amended, codified as D.C. Code, Title 1, Chapter 25, (1987), and this Order is conditioned upon full compliance with those provisions. Nothing in this Order shall be understood to require the Zoning Regulations Division/DCRA to approve permits, if the applicant fails to comply with any provisions of D.C. Law 2-38, as amended.

Vote of Zoning Commission taken at the public meeting on July 10, 1989: 5-0 (Maybelle Taylor Bennett, Lloyd D. Smith, John G. Parsons, William L. Ensign and Lindsley Williams, to approve with conditions).

The guidelines, conditions and standards were approved by Zoning Commission at its public meeting on August 7, 1989.

This order was adopted by the Zoning Commission at the public meeting on November 13, 1989 by a vote of 4-0 (Lloyd D. Smith, William L. Ensign, Maybelle Taylor Bennett and John G. Parsons, to adopt as amended).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is on _____.

MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission

EDWARD L. CURRY
Executive Director
Zoning Secretariat

zc-88-32C/BHS13

H

THERE IS NO DOCUMENT FOR THIS EXHIBIT



DISTRICT OF COLUMBIA
COURT OF APPEALS

District of Columbia
Court of Appeals

FILED MAR 13 1981
James E. Leahy
Acting Clerk

No. 80-802

PENN-BRANCH CITIZENS' ASSOCIATION, *et al.*, Petitioners,

v.

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, Respondent.

Petition for Review of an Order of the District of Columbia Board of Zoning Adjustment

(Argued January 14, 1981 Decided March 13, 1981)

Before: Kern, Harris, and Pryor, Associate Judges.

MEMORANDUM OPINION AND JUDGMENT

Before us is a petition for review of an order approving a determination by the Zoning Administrator that restaurants to be operated by Burger King Corporation and MSM Enterprises, Inc., are permitted uses in a C-1 zone. Petitioners are Penn-Branch Citizens' Association, Southeast Neighbors, Inc., and David Lit. They contend that the order of the Board of Zoning Adjustment (BZA) is arbitrary and capricious in that it fails to consider the issue of lack of notice to the affected Advisory Neighborhood Commission (ANC) and it fails to find that the proposed facilities are prohibited uses in the C-1 zone.1/ Finding no error, we affirm.

I

Petitioners object to the grant of building permits for a Burger King and a Church's Fried Chicken to be located on adjoining lots in a C-1 (neighborhood shopping) district within their neighborhood.2/ Plans for both fast-food outlets called for inside seating facilities (approximately 90 seats for Burger King and 20 for Church's) as well as off-street parking. Plans for drive-through windows to accommodate those wishing to order and pick up food without leaving their cars were deleted at the insistence of the Zoning Administrator. On these facts, the BZA affirmed the Zoning Administrator's approval of building permits for the two facilities, specifically finding them to be restaurants and not drive-ins and, therefore, permitted uses in the C-1 zone.

1/ Because we conclude that the building permits were issued for a permitted use, namely, a restaurant, we need not address petitioners' contention that, in approving the permits at issue, the Zoning Administrator overstepped his authority.

2/ At the time of oral argument, only the Burger King was fully constructed and operational.

WILKES & ARTIS CHARTERED
RECEIVED
MAR 16 1981

II

During the course of agency approval of intervenors' applications for building permits, the affected ANC was not informed that the applications had been filed. Petitioners contend that the BZA erred in failing to consider the lack of notice issue. The short answer to this is that the BZA had no jurisdiction to consider whether the notice requirements under the Advisory Neighborhood Commissions Act of 1975, D.C. Code 1978 Supp., §§ 1-171 *et seq.*, were violated and it properly so ruled. The jurisdiction of the BZA is limited to matters regarding the administration and enforcement of zoning regulations, *see* D.C. Code 1973, § 5-420; District of Columbia Zoning Regulations 8102.1, 8206.1, and the ANC Act is not a zoning regulation. Moreover, the obligation to provide notice where appropriate falls upon the Department of Economic Development (now the Department of Licenses, Inspections, and Investigations), D.C. Code 1978 Supp., § 1-1711(c)(3), and is not the duty of the Zoning Administrator whose approval of the building permits is the basis for this appeal.3/ In any event, the BZA did provide notice to the ANC of its public hearing on petitioners' appeal from the actions of the Zoning Administrator in approving the permits. The BZA invited the ANC's comments and allowed its participation in the hearing. It was without power to do more.4/

III

Permitted uses in a C-1 zone include lunch counters, lunch rooms, cafes, or restaurants, but not drive-in type restaurants. District of Columbia Zoning Regulations 5101.3, 5101.33(q) (as amended 1961). Petitioners contend that the BZA erred in concluding that intervenors' proposed facilities are in fact restaurants and not drive-ins. Our review of the BZA's interpretation of this regulation is very narrow. We must defer to its decision on the meaning of a phrase contained in its regulations unless that interpretation is clearly erroneous or inconsistent with the regulations. *Keefe Co. v. Board of Zoning Adjustment,* D.C.App., 409 A.2d 624, 625-26 (1979); *Kenmore Joint Venture v. Board of Zoning Adjustment,* D.C.App., 391 A.2d 269, 276 (1978); *Smith v. Board of Zoning Adjustment,* D.C.App., 342 A.2d 356, 360 (1975).

That said, we find no error in the BZA's conclusion that the term "drive-in" refers to a facility designed to accommodate the serving and consumption of food in a vehicle rather than in a restaurant. Nor is that interpretation inconsistent with the regulations which, incidentally, were amended to exclude drive-ins at the behest of some of the same witnesses who participated in this proceeding. In the early 1960's, these neighbors had objected to the presence of a "Mighty Moe" restaurant on the present

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3/ While we need not address the propriety of providing routine notice to affected ANC's of applications for building permits for permitted uses in their neighborhoods, we simply note that ANC's are not entitled to special thirty-day notice of every agency action but rather are entitled only to notice of matters of significance to neighborhood planning and development. *See* D.C. Code 1978 Supp., § 1-171(d); *Kopff v. Alcoholic Beverage Control Board,* D.C.App., 381 A.2d 1372, 1381 (1977).

4/ Petitioners are not without a forum, however, since a court of original jurisdiction would be open to them.

Burger King site, which "ha[d] positions under a canopy where car hops would come. . . . You would order your food over the microphone and the car hop would bring the food to the [tray] position." The neighbors sought specifically to abandon "this type of operation" and the zoning regulations were amended accordingly in 1961 to exclude "drive-ins" as permitted uses in the C-1 zone. The word "drive-in" is not defined in the zoning regulations, but Regulation 1201.2 provides that words not defined therein shall have the meanings given in Webster's unabridged dictionary. Webster's Third New International Dictionary (unabridged) defines "drive-in" as "a place of business (as a motion-picture theater, bank, or refreshment stand) laid out and equipped so as to allow its patrons to be served or accommodated while remaining in their automobiles." This definition is consistent with the way other courts have interpreted the term "drive-in" in similar cases. *See, e.g., Burger King of St. Louis, Inc. v. Weisz*, 444 S.W.2d 517 (Mo. 1969). We are not inclined to rule that the definition necessarily extends to fast-food facilities characterized by a significant volume of carry-out business. That is a determination properly reserved to the agency; the Zoning Administrator has consistently determined (and the BZA has so ruled in many cases) that a "carry-out" or "delicatessen" is a permitted use in the C-1 zone.5/ We find no error, therefore, in the BZA's ruling that the uses challenged in this case are permitted.

Accordingly, it is

ORDERED and ADJUDGED that the decision on appeal be, and it hereby is, affirmed.

PER CURIAM.

FOR THE COURT:

JAMES F. LYNCH,
Acting Clerk

Copies to:

Johnny Barnes, Esq.
3014 V Place, S.E.
Washington, D.C. 20020
Attorney for Petitioners

Charles L. Reischel, Esq.
Deputy Corporation Counsel, D.C.
Attorney for Respondent

C. Francis Murphy, Esq.
1666 K Street, N.W.
Washington, D.C. 20006
Attorney for Intervenor Burger King Corporation

Joseph T. Casey, Jr., Esq.
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
Attorney for Intervenor MSM Enterprises, Inc.

5/ Additionally, the issue whether a "drive-through"window converts a fast-food restaurant into a drive-in is not before us. In line with the Zoning Administrator's strict interpretation of the regulation, the BZA in its order also directed that plans for driveway access to the drive-through windows already eliminated by the Zoning Administrator be deleted, thus addressing petitioners' concern that the intervenors might seek variances in the near future to reinstate plans for the windows.

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DEPARTMENT OF HEALTH
ENVIRONMENTAL HEALTH ADMINISTRATION

BUILDING PERMIT APPLICATION SUPPLEMENTAL FORM - ENVIRONMENTAL QUESTIONNAIRE

PROJECT ADDRESS: 1957 E ST, NW LOT 835 SQUARE 122

Note: please answer all 10 questions in this questionnaire, by checking either column "Yes" or "No" for each question. If you answer "Yes" to any of the questions, you should contact the corresponding office(s) indicated in column 'contact person/office', as soon as possible. Until this application is reviewed and approved by the concerned office(s), the permit will not be issued.

SCOPE OF PROJECT	YES	NO	CONTACT PERSON/OFFICE	OFFICE USE
1. Does the total cost of the project exceed $1 million? This does not apply if project is for internal (tenant space) renovation only and there will be no change in the use of the building.	X		(202) 645-6617, EIS Coordinator, EHA	
2. Will the work to be performed involve the installation, removal, abandonment, or repair of an underground storage tank (UST) system?		X	(202) 645-6080, Underground Storage Tank Division, EHA	
3. Will the work to be performed involve the assessment Or clean-up of soils associated with the release of materials from an underground storage tank (UST)?		X	(202) 645-6080, Underground Storage Tank Division, EHA (202) 645-6093, Air Quality Division, EHA	
4. Will the work to be performed involve the assessment or clean-up of groundwater associated with the release of materials from an underground storage tank (UST)?		X	(202) 645-6080, Underground Storage Tank Division, EHA (202) 645-6093, Air Quality Division, EHA (202) 645-6601, Water Quality Division, EHA	
5. Will the proposed project involve the installation or drilling of wells other than for the purposes stated in questions 3 and 4?		X	(202) 645-6601, Water Quality Division, EHA (202) 645-6093, Air Quality Division, EHA	
6. Will the proposed project involve the generation, treatment, storage, disposal or transportation of chemicals or other substances which may be considered hazardous?		X	(202) 645-6080, Hazardous Waste Division, EHA	
7. Will the proposed project involve construction which will disturb the sediment in rivers, streams or wetlands?		X	(202) 645-6601, Water Quality Division, EHA	
8. Will the proposed use involve the construction of a facility for the handling, transfer, storage, disposal or treatment of solid waste, medical waste, or recyclable materials?		X	(202) 645-6617, EIS Coordinator, EHA	
9. Will the proposed project result in the discharge into the air of gases, dust, or the creation of any objectionable odors?		X	(202) 645-6093, Air Quality Division, EHA	
10. Will the proposed project involve the removal, handling, transportation, disposal, or encapsulation of asbestos?		X	(202) 645 – 6093, Air Quality Division, EHA	

AFFIDAVIT

I hereby certify that I have the authority of the owner of the property to make this application. I declare that the answers to the above questions in this Questionnaire are complete and correct to the best of my knowledge.

Signature _____ Name (print) _____

Address _____ Date _____ Phone _____

OFFICE USE ONLY

EHA APPROVAL BY _____ NAME (Print) _____

CONTACT NUMBER : (202) _____ DATE: _____

COMMENTS AND PERMIT RESTRICTIONS: _____



Government of the District of Columbia
Department of Health

Environmental Health Administration

MEMORANDUM

TO: Denzil Noble, Acting Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
C/o Loraine Bennett or Marquette Johnson

FROM: Jim Granger
Environmental Review Coordinator
DOH

DATE: 10/20/00

SUBJECT: Environmental Review for GWU Residential/Educational Building
1957 E Street, NW. EHA Control Number 00-0025

The Environmental Health Administration of this department has completed its review of the Environmental Impact Screening Form (EISF) for the proposed athletic fields at 2100 Foxhall Road, NW.

Based on our review, we have determined that there will be no significant adverse environmental impacts from the proposed project in our areas of responsibility, which include Air Quality, Surface and Ground Water Quality, Storm Water Management, Sediment and Erosion Control, Hazardous Waste Management, Toxic Substances Control and Underground Storage Tanks. Therefore, it is our recommendation that for areas under the jurisdiction of the Environmental Health Administration, an Environmental Impact Statement (EIS) will not be required for this project.

Our review indicates that one 500-gallon diesel underground storage tank (UST) for an emergency generator was removed in December 1998. A Leaking Underground Storage Tank (LUST) case was opened in June 1993 and closed in July 1993. Currently there is no UST or LUST case for the site.

An environmental site assessment during construction will reveal any unknown or buried tanks and other subsurface conditions. Please be advised that during all construction activities, the excavated soil must be screened in the field to determine its petroleum contamination. If the

sample(s) test results indicate greater than 100 PPM Total Petroleum Hydrocarbons (TPH) or a total of 10 PPM of benzene, toluene, ethylbenzene and xylenes (BTEX), or is above established disposal criteria for volatile organic compounds (VOC)-impacted soil, the soil must be shipped to an approved off-site treatment facility. Any contaminated groundwater extracted during the dewatering stage must be treated according to the District's water discharge standards. A pretreatment discharge permit must be obtained from the D.C. Water and Sewer Authority (WASA) prior to discharge to any sanitary or combined sewer. Any issues related to USTs have to be addressed as required under Title 20 DCMR Chapters 55 through 70. Any questions about USTs should be referred to Dr. V. Sreenivas at (202) 535-2525.

Attachment

cc: Doreen Thompson, OECEJ

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health
Environmental Health Administration

Watershed Protection Division

MEMORANDUM

TO: James Sweeney, EIS Coordinator
Hazardous Waste Division

FROM: Hamid Karimi, Program Manager

DATE: October 4, 2000

SUBJECT: Comments on EISF Review Pertaining to EHA LOG # 00-00025
1957 E Street, N.W., Washington, D.C.; LOT #s 835; SQUARE #s 122;
George Washington University - Residential/Educational Building

The Watershed Protection Division is providing the following comments as a response to your request for an EISF review of the above project :

The site for this project is located on E street, between 19th and 20th streets, N.W. Proposed improvements to the site include site preparation and demolition of existing structures for the future construction of a student dormitory and a classroom building. The current design includes provisions for controlling storm water runoff by utilizing two sand filter water quality structures capable of handling runoff from the 30,000 square feet impervious area. Appropriate sediment control measures are also included in the design with provisions for dewatering should groundwater be encountered during excavation. We have reviewed approvable plans for the above project, and based on our review, we see no significant environmental impact in our area of concern. Therefore, in our view an EIS should not be required for the project. Furthermore, implementation of the sediment control and storm water management systems proposed for the project should be sufficient to mitigate any environmental impact associated with surface runoff, erosion and sedimentation during construction as well as post construction.

Please, contact Mr. Timothy KariKari of my staff on (202) 535 - 2240 or 2248 if you have any questions about this matter.

Thank you.

Government of the District of Columbia
Department of Health
Environmental Health Administration

Bureau of Hazardous Material & Toxic Substances

Hazardous Waste Division

MEMORANDUM

TO: Site File
EHA Log # 00-00025

FROM: James P. Sweeney, Acting Program Manager
Hazardous Waste Division

DATE: September 22, 2000

SUBJECT: EISF Review
GWU – Residential/Educational Building
1957 S Street, NW
EHA Log Number 00-00025

We have reviewed the Environmental Impact Screening Form (EISF) for the George Washington University Residential/Educational Building, located at 1957 S Street, NW. We have determined that since there are no hazardous substance issues associated with the project, there will be no significant adverse environmental impact in the areas of interest to the Hazardous Waste Division.

Therefore, the BHMTS does not recommend that an Environmental Impact Statement be required for this project.

JPS/js

51 N Street, NE, Third Floor, Washington, DC 20002 tel: (202) 535-2290 fax: (202) 535-1386

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health, Environmental Health Administration

Office of the Program Manager



MEMORANDUM

TO: James Granger
Environmental Review Coordinator,
Office of Enforcement, Compliance and Environmental Justice

THROUGH: Jerusalem Bekele
Program Manager, Water Quality Division

FROM: Diane Douglas
Environmental Specialist, Water Quality Division

DATE: October 19, 2000

SUBJECT: GWU 1957 E Street, NW - EISF No. 00-00025 revised

The Water Quality Division (WQD) has reviewed the abovementioned Environmental Impact Screening Form (EISF). Based on the information contained in this EISF, additional information from George Washington University to the Environmental Health Administration (EHA) and other in-house documents, the WQD has the attached comments.

(c) The action might significantly deplete or degrade ground water resources;

(d) The action might significantly interfere with groundwater recharge.

(l) The action might cause significant adverse change in the existing surface water quality or quantity.

Ground Water

The following addresses Section 7201.1(c) and (d) of the Environmental Policy Act regulations.

It is noted on the EISF (Part1.B.1) that the average and maximum depths of excavation will be 45 feet and 60 feet respectively. These depths place the sub-basement below the ground water table. According to SEA (Facsimile Transmission, 2000), "...a pump capacity of about 25 gallons per minute should be initially selected" with adjustments made to the size of the pump as required. This initial recommended pump capacity suggests that dewatering at the site will only have a small to moderate impact on ground water flow in the vicinity of the project site.

The responses to Part 1.B.17, 18, 21, and 22 of the EISF indicate that contaminants will not be generated or used at the site. In addition, there are no known sources of contaminants in the vicinity. As a result, no substantial impact is anticipated to ground water quality.

The EISF incorrectly states that the percent of pervious area before construction at the project site is 100 percent (Part 1.A.1b). However, according to a GWU representative (Personal Communication, 2000) no pervious area will be lost. Therefore, the proposed project is not expected to significantly interfere with ground water recharge.

Surface Water

The following addresses Section (l) of the Environmental Policy Act regulations.

The nearest downgradient surface water body is several miles away. Therefore, this project is not anticipated to have an impact on surface water quantity or quality.

(c) The action might significantly deplete or degrade ground water resources;

(d) The action might significantly interfere with groundwater recharge.

(l) The action might cause significant adverse change in the existing surface water quality or quantity.

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Government of the District of Columbia
Department of Health
Environmental Health Administration

Bureau of Hazardous Material & Toxic Substances

Toxic Substance Division

MEMORANDUM

TO : James Sweeney
Environmental Review Coordinator

FROM : Mark A. Greenleaf, Program Manager
Toxic Substance Division

DATE : September 8, 2000

SUBJECT : **EISF Review**
George Washington University
Residential/Educational Building
1957 E Street, NW
EHA Log Number: 00-00025

We have reviewed the Environmental Impact Screening Form (EISF) for the proposed George Washington University Residential/Educational Building, 1957 E Street, NW. We have determined that based upon the plan submitted, there is no indication that adverse environmental impacts would occur in the areas of interest to the Toxic Substance Division based upon the following:

- No species of plant or animals were identified as threatened or endangered and therefore would not be affected if there were any releases of pesticides.
- There are no reported effects of pesticides to public health and safety originating from this site where pesticides may have been applied according to label directions.
- Pesticide products will not be applied at this site as part of the project according to the information provided.

Therefore, the Division does not recommend that an Environmental Impact Statement be required for this project.

MAG/gh
eisf-00-00025

51 N Street, NE, Third Floor, Washington, DC 20002 Tel: (202) 535-2299 Fax: (202) 535-1425

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health
Environmental Health Administration

Underground Storage Tank Division

MEMORANDUM

To: Mr. Jim Sweeny
EIS Coordinator

From: Dr. V. Sreenivas
UST/LUST Division

Date: September 1, 2000

Re: George Washington University Residential/Educational Bldg. – 1957 S Street, NW

This memo is in regards to the Environmental Impact Screening (EIS) of the George Washington University's Residential/Educational Building. Based on our database search, a 500-gallon diesel UST for an emergency generator was removed in December 1998. A Leaking Underground Storage Tank (LUST) case was opened in June 1993 and closed in July 1993. Currently, there is no UST or LUST case for the site.

The existing USTs on the site should be managed and operated in accordance with all applicable District and federal regulations. However, an environmental site assessment will reveal the unknown or buried tanks and other subsurface conditions. Please be advised that during all construction activities, the excavated soil must be screened in the field to determine its petroleum contamination. If the sample(s) test results indicate greater than 100 ppm Total Petroleum Hydrocarbon (TPH) or total of 10 ppm of benzene, toluene, ethylbenzene and xylenes (BTEX), or is above established disposal criterion for volatile organic compound (VOC) - impacted soil, the soil must be shipped to an approved off-site treatment facility. Any contaminated groundwater extracted during the dewatering stage must be treated according to the District's water discharge standards. A pretreatment discharge permit must be obtained from the D.C. Water and Sewer Authority (WASA) prior to discharge to any sanitary or combined sewer. Please contact this office for further guidance.

However, any issue related to USTs has to be addressed as required under Title 20 DCMR Chapters 55 thru' 70. Since EIS is not based on just one program, UST will give its input assisting in overall EIS approval programs. Please do not hesitate to call this office at (202) 535-2525 for any concerns or issues related to UST/LUST.

cc: Dr. Lynette Stokes, Bureau Chief

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51 N Street N.E., 3rd Floor, Washington D.C. 20002-3315 tel: (202) 535-2525 Fax: (202) 535-1383
Visit our web site: www.environ.state.dc.us/ustd/hazmat.htm

ON LOG Recd 10/17

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
ENVIRONMENTAL HEALTH ADMINISTRATION
BUREAU OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
51 N Street, N.E., 5th Floor
Washington, D.C. 20002-3323

10/17/00

MEMO TO: James Granger

FROM: Donald E. Wambsgans II
Program Manager

SUBJECT: EISF #00-025-GWU Residential Education Building

This is to respond to your August 25th request to review Environmental Impact Screening Form (EISF) #00-025, regarding the proposed residential education building at GWU at 1957 E Street, N.W.

Based on our review of the EISF, we have determined that an environmental impact statement will not be necessary and that further information will not be needed for air quality purposes, provided that the proposed action is as described in the application.

In addition, the construction or operation of incineration facilities in the District of Columbia is prohibited pursuant to §602.5 of Title 20 of the District of Columbia Municipal Regulations.

If we can be of further assistance, please call.

Read 10/16/00

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health, Environmental Health Administration

★ ★ ★

Fisheries and Wildlife Division

[redacted]

MEMORANDUM

TO: Jim Granger
Environmental Review Coordinator

FROM: Ira F. Palmer, Program Manager
Fisheries and Wildlife Division

DATE: October 13, 2000

SUBJECT: Comments on EISF Review Pertaining to EHA LOG #00-00025
1957 E Street, N.W., Washington, D.C. Lot #s 835; SQUARE #s 122;
George Washington University -Residential/Educational Building

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The following is a review of the EHA LOG #00-00025 1957 E Street, NW Washington, DC George Washington University - Residential/Educational Building for:

Section 7201.2 (h) of the Environmental Policy Act implementing regulations provides that a project should be assessed to determine whether:

The action might significantly diminish habitat for fish, wildlife or plant;

A site visit and review of the proposal project EHA LOG #00-00025, the following comments on the project related to 7201.2 (h).

List of Documents Consulted

1.District of Columbia list of Endangered and Threatened Species
2.U.S. Fish and Wildlife Service Federal list of Threatened and Endangered Species
3. Section 6 Guidelines for Threatened and Endangered Species Act

Environmental Setting

The site for this project is located on E Street, between 19th and 20th streets, NW Proposed improvements to the site include site preparation and demolition of existing structures for the future construction of a student dormitory and a classroom building. Site located in the central business district.

Environmental Consequences

After we reviewed the plans for the above project, and based on our site visit and review, we see no significant environmental impact that might significantly diminish habitat for fish, wildlife or plants. Therefore, in our view an EIS should not be required for this project.

Please contact me on (202 535-2266, if you have any questions or concerns,