Government of the District of Columbia
ZONING COMMISSION

ZONING COMMISSION ORDER NO. 904
Case No. 98-21C
(Consolidated PUD and Map Amendment
At 4717-4727 Wisconsin Avenue, N.W.)
September 13, 1999

This Decision and Order arises from an application by the law firm of Wilkes, Artis. Hedrick & Lane, on behalf of Heurich Company (the owner) and P.N. Hoffman, Inc. (the contract purchaser/the applicant) for the consolidated review and approval of a planned unit development (PUD) and a related change of zoning from C-2-A to C-2-B for Lots 807, 812, and 817, in Square 1734 located at 4725 - 4727 Wisconsin Avenue, N.W.

PROCEDURAL HISORY

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on April 8, 1999. At the public hearing, the Zoning Commission considered an application from the Heurich Company, Wohlfarth Development and P.N. Hoffman, Inc. (collectively The applicant) for consolidated review and approval of a planned unit development (PUD) and a related amendment to the Zoning Map of the District of Columbia for the property at premises 4717-4727 Wisconsin Avenue, N.W., pursuant to Chapter 24 and Section 102, respectively, of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. On November 24, 1998, the Office of Zoning received an application from the law firm of Wilkes, Artis. Hedrick & Lane, on behalf of Heurich Company (the owner) and P.N. Hoffman, Inc. (the contract purchaser/the applicant) for a consolidated review and approval of a planned unit development (PUD) and a related change of zoning from C-2-A to C-2-B for Lots 807, 809,812, and 817, in Square 1734. The property is located at 4725 to 4727 Wisconsin Avenue, N.W. The applicant is the owner of Lot 809 in Square 1734 and the contract purchaser of Lots 807, 812 and 817.

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The PUD site consists of approximately 22,630 square feet of land area. The site is bounded by Davenport Street, N.W. to the north, 41st Street, N.W. and Fort Reno Park to the east, Wisconsin Avenue, N.W. to the west, and the intersection of Chesapeake Street and Wisconsin Avenue to the south. The site is presently used as a surface parking lot and is improved with a small building.

The applicant seeks to construct a residential/commercial mixed-use development on the site. The building will have a maximum height of approximately 65 feet. The development will consist of retail/office uses on the first and second floors along Wisconsin Avenue and will include 48 residential units along Davenport and 41st streets, N.W. The project will consist of a gross floor area of 101,800 square feet, a floor area ratio (FAR) of 4.5, of which 3.7 would be devoted to residential and .8 for commercial purposes, and a lot occupancy of 85 percent. 75 parking spaces located on two levels would be provided, 52 parking spaces for residential and 23 for commercial uses.

4. The C-2-A District permits matter-of-right low-density development, including office, retail and all kinds of residential uses limited to 1.5 FAR, a maximum height of 50 feet, and maximum lot occupancy of 60 percent for residential uses.

5. The C-2-B District permits matter-of-right medium density development, including office, retail, housing, and mixed uses to a maximum height of 65 feet, a maximum (FAR) of 3.5 for other permitted uses, and a maximum lot occupancy of 80 percent for residential uses.

6. At the public hearing and with a pre-hearing submission, the applicant testified that the subject property is situated in Ward 3 and is located in the low-density commercial land use category and the Tenleytown Metrorail Station Housing Opportunity Area . The immediate area is developed with office/retail buildings and commercial television towers, along Wisconsin Avenue, single-family dwellings to the north of the property, and Ft. Reno Park, the D.C. Reservoir, and D.C. school buildings to the east.

7. The applicant testified that the site is proposed to be developed with a primarily residential mixed-use project which includes 48 residential units and a small retail and office component. The project will have a total gross floor area of 101,800 square feet and a total FAR of 4.5, with a residential FAR of 3.7 and 0.8 FAR of retail/office space. (Exhibit Nos. 49 and 53 of the record).

8. The residential portion of the project will include 43 condominium units (including one, two and three bedrooms) located in a mid-rise building which will be accessed solely

from 41st street, N.W. This portion of the project consists of 73,000 gross square feet. The project also includes five townhouse units of 10,700 square feet of floor space. These units have three/four bedrooms and have separate entrances from the mid-rise building. Three townhouses are located along and have entrances on Davenport street, N.W., while the remaining two townhouses are located along and have entrances on 41st street, N.W.

9. The small retail/office portion of the project is located along and accessed solely from Wisconsin Avenue, N.W. The retail/office portion of the project consists of 18,100 gross square feet of floor space. This portion of the project includes a community room that will be made available to ANC 3E and other community groups, and an office for use by ANC-3E.

10. The applicant stated that the project will include a total of 75 parking spaces located on two levels. There will be at least a 1:1 ratio of parking spaces to units in the residential portion of the project. The lowest parking level will be accessed from Davenport Street, N.W. and will include 52 parking paces to be used by residents of the project. The commercial portion of the parking garage will be located a level above and is accessed solely from Wisconsin Avenue, N.W. The commercial parking level includes 23 parking spaces for use by the commercial tenants and the residents of the project and their guests when the commercial establishments are closed. The project includes one loading berth at the southern end of the building along Wisconsin Avenue, N.W. (Exhibit 49 of the record)

11. Monty Hoffman, the president of P.N. Hoffman, Inc., concluded his testimony by discussing the amenities that the project provides and highlighted the main amenity of the project, as being the production of housing on the site. Mr. Hoffman also discussed the process that the applicant followed in seeking community input from the outset of the development of the project, which helped create the substantial community support. He indicated that the project amenities include the following:

    a. The creation of 48 new residential units for permanent residents of the District of Columbia in an area where increased residential development is sought, as evidenced by the project's location in the Tenleytown Metrorail Station Housing Opportunity Area;

b. Landscaping and the construction of new sidewalks in public space and creating infill development at a site that is presently heavily utilized for commercial car and truck rental use with a vacant and deteriorating structure.

c. The creation of a Construction and a Post-Construction Development Agreement with the community. The agreement will regulate construction activities on the site, facilitate future development of the site and prohibit operation of fast-food establishments, dry-cleaning establishments, and liquor stores. The restrictions do not apply to family-style restaurants or an establishment that intends to operate 24 hours a day.

d. The creation of a community room and office space for use by ANC 3E and other community organizations which will be accessed solely from Wisconsin Avenue, N.W.

e. The re-landscaping and maintenance of the triangular piece of land owned by the National Park Service (part of U.S. Reservation 470) bounded by 41st and Davenport streets and Belt Road.

f. The provision of a First Source Employment Agreement with the D.C. Department of Employment Services and a Memorandum of Understanding with the Department of Human Rights and Local Business Development.

12. The project architect, Ralph Cunningham of Cunningham and Quill Architects, who was recognized by the Commission as an expert in architecture, described the area which surrounds the subject property and how the property is surrounded by three very different streets. The design of the project incorporates the residential character of Davenport and 41st streets by including townhouses on these two streets and large courtyards on 41st Street. The project design includes a distinct base, middle and top. Along Wisconsin Avenue three vertical sections are included in order to create some relief to the horizontality of the facade.

13. Mr. Cunningham further discussed the layout of the residential units, including the duplex units on the fifth and sixth floors of the project. Since the elevator service does not go to the sixth floor, the applicant has been able to include a penthouse of only 10 feet (rather than the permitted 18.6 feet) in order to minimize the project's potential impact on the area and the views from Fort Reno Park. Martin J. Wells, recognized as an expert in traffic engineering, submitted a traffic impact analysis and testified at the public hearing. Mr. Wells addressed the traffic, parking and

loading impacts of the development and stated that the project will consolidate the five driveways presently on the site to three, that the site will generate relatively few vehicular trips, that the provision of 75 parking spaces is sufficient to meet the parking demand of the project on-site, and that the provision of a 30-foot loading bay meets the requirements of the Zoning Regulations. Mr. Wells concluded that there will be no adverse traffic, parking or loading impacts caused by the project on the existing traffic operations or the adjacent neighborhoods.

15. Steven E. Sher, the applicant's land planning expert, submitted written testimony and testified that the proposed PUD and map amendment from C-2-A to C-2-B creates a project which is 80 percent residential while maintaining the same height of 65 feet as permitted by the PUD Zoning Regulations for the C-2-A zone. Mr. Sher stated that the project's creation of a substantial amount of housing is consistent with the subject property's inclusion in the Tenleytown Metrorail Station Housing Opportunity Area, its proximity to a Tenleytown Metrorail Station Special Treatment Area, and is consistent with elements of the Ward 3 Plan of the Comprehensive Plan. (Exhibit 42 of the record).

16. Mr. Sher also addressed the project's potential impact on and compatibility with Fort Reno Park. Mr. Sher testified that because the highest part of the project is set farthest away from the Park, the distance between the subject property and the Park is several hundred feet with mature trees along the western edge of the Park to screen the views, the height of the proposed building does not obscure any particular vista from the Park. Mr. Sher concluded that the proposed project is not inconsistent with the Comprehensive Plan, is within the applicable height and density standards of the Zoning Regulations, is compatible with the existing and expected character of the area and that the height of the project would not be obtrusive to views from the Park. (Exhibit 42 of the record)

17. The applicant stated through testimony and written submission to the record that the PUD does not meet the lot occupancy and residential recreation space requirements of the matter-of-right requirements of the C-2-B Zone. The applicant stated that minor deviations from these requirements are necessary to accommodate the high-quality, primarily residential mixed-use development that will fulfill District and neighborhood planning goals.

18. The District of Columbia Office of Planning (OP), by memorandum dated March 29, 1999, and by testimony presented at the public hearing, recommended approval of the application. OP concluded that the project is not inconsistent with the Comprehensive Plan and the Generalized Land Use Map and that the application will provide substantial benefits for the District through the creation of 48 new residential units and a strong

design character to Wisconsin Avenue that is presently lacking. (Exhibit 43 of the record).

19. The Department of Public Works (DPW) by memorandum dated April 6, 1999, concluded that the proposed PUD will have no adverse impacts on traffic operating conditions in the area, and accordingly supports the proposal. (Exhibit 43 of the record).

20. Advisory Neighborhood Commission 3E submitted a resolution in support of the application to the record of this case. By action taken March 11, 1999, ANC-3E voted 4 to 0, to support the application with conditions. (Exhibit 48 of the record)

21. The Community Council for the Homeless at Friendship Place (the property owner immediately to the south of the subject property), submitted a letter and testified at the public hearing in support of the project. The representative of this organization stated that this project was consistent with the development that the community would like to see in the Tenleytown area. (Exhibit 47 of the record)

22. Numerous members of the surrounding community submitted letters in support of the application including business owners in the area. There was no opposition to the application.

23. At the close of the hearing, based on issues raised by the Commission, the record of the case was left open for the following:

    a. Sample of materials to be used in the project;

    b. A landscape plan for the rooftop terrace;

    c. Additional information depicting the impacts, if any, of the project on views from Fort Reno Park;

    d. Limitations on the use of the commercial parking level by residents of the project and their guests to resolve potential conflicts with use of that parking level by employees of the office tenants and visitors to the commercial portion of the project;

    e. Plans which depict revisions to the treatment of the doors for the entrance to the parking garage and loading berth on Wisconsin Avenue; and

f. A specific landscape plan for the re-landscaping and maintenance of the national Park service property that has been approved by the National Park Service.

24. The applicant filed the requested materials with the Office of Zoning on April 30, 1999. The applicant's post-hearing submission included plans and drawings certified by a licensed surveyor, that provide additional information regarding the projects impact on views from Fort Reno Park. These drawings demonstrate that from a point in Fort Reno Park 300 feet from the subject property, the proposed project is below the line of sight of a matter-of-right building with a height of 50 feet that could be constructed along 41st street, N.W. (Exhibits 49, 50 and 51 of the record).

25. These drawings also demonstrate that, closer to the subject property, the impact of the proposed project, compared to a matter-of-right building, becomes even less due to the grade of the Park and because the highest point of the project is located on Wisconsin Avenue, the farthest point from the Park. The project does not become visible at all, compared to a matter-of-right building, until one moves farther away from the subject property. As this occurs, the ability to differentiate the height of the proposed project from the horizon is diminished and the appearance of the increase over a matter-of-right building is negligible. In addition, the line of trees on the western edge of the Park further obscures the ability to see the project, while the impact of the project on the views from the Park is further diminished. (Exhibit 49 of the record)

26. The applicant also submitted pictures, from various points in the Park, which depict the entire panorama of views from the Park. These pictures show that the views from the Park toward the proposed project is not the only, or the predominate view, from the Park. The pictures show how those views are already impacted by the reservoir, the television towers, Wilson High School, and the other buildings in the surrounding area. (Exhibit 49 of the record)

27. The applicant's post-hearing submission includes construction drawings and specifications for the triangular park owned by the National Park Service. These drawings and specifications were made, pursuant to the comments received from the National Park Service. (Exhibit 49 of the record)

28. The applicant's post-hearing submission includes drawings, which reflect changes to the roof structure and the landscaping of the rooftop and southern terrace levels. The height of the penthouse structure was reduced by one foot so that the structure has a height of nine feet. The overall size of the roof structure was reduced by 800 square feet, by

moving the penthouse structure away from the edge of the project closest to Fort Reno Park. In addition, the rooftop trellis has been refined and additional landscaping and planters have been added to soften and further obscure the view of the penthouse structure from the surrounding neighborhood and Fort Reno Park. The design of the southern terrace level was also revised to include additional planters and a refined trellis. (Exhibit 49 of the record)

29. The applicant reevaluated the treatment of the doors of the entrances to the commercial portion of the parking garage and the loading berth along Wisconsin Avenue. Plans submitted to the Commission, as part of the applicant's post-hearing submission, reflect a narrowed opening of the entrance to the commercial portion of the parking garage and the use of metal and frosted glass on both doors in order to maintain continuity along the Wisconsin Avenue facade of the project. (Exhibit 49 of the record)

30. The applicant's post-hearing submission also included a parking management plan for the use of the commercial portion of the parking garage by residents of the project and their guests when the majority of the commercial establishments are closed. This plan includes the following requirements: limiting the use of this parking level, between the hours of 6:00 a.m. to 7:00 p.m., to employees of the office tenants and visitors to the retail and/or restaurant tenants; allowing use of this parking level on a first-come, first-served basis between the hours of 7:00 p.m. to 12:00 a.m.; closing this level of the garage at 12:00 a.m.; and requiring that the projects commercial management company be responsible for the enforcement of the plan and provide for towing of all cars left in the garage after the 12:00 a.m. closing time. (Exhibit 51 of the record)

31. ANC 3E, by letter dated April 22, 1999, addresses the issues of the height of the project and the impact on the view from Fort Reno Park. This letter stated that the ANC believes allowing an additional 15 feet of height on the western side of the project, farthest from Fort Reno Park, was a good trade-off in adding housing stock to the neighborhood. In addition, the letter stated that no neighbors had raised any concerns about the building impacting the view from Fort Reno Park and the ANC did not feel that the height of the building would be detrimental to the area or the view from the Park. (Exhibit 48 of the record)

32. Kathy Patterson, District of Columbia Councilmember from Ward 3, in a letter dated April 20, 1999, supports the project based on The applicant's inclusion of the community in the development of it. (Exhibit 45 of the record)

33. Jim Graham, District of Columbia Councilmember from Ward 1, in a letter dated April 21, 1999, supports the project based on its contribution to the local neighborhood and its production of quality housing near the Tenleytown Metrorail Station. (Exhibit 46 of the record)

34. The Commission concurs with the position of the applicant, OP, DPW, ANC 3E and numerous members of the community in that the consolidated planned unit development and map amendment applications should be approved.

35. The Commission finds that the proposed height and bulk of the project is appropriate for the subject property, the surrounding area, and will not adversely impact the views from Fort Reno Park.

36. The Commission finds that the minor deviations from the lot occupancy and residential recreation space requirements are necessary to the successful completion of the project and will not adversely affect neighboring properties.

37. The Commission further finds the C-2-B Zone to be an appropriate zoning category to achieve the goals of the project.

38. 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. NCPC, by a report dated August 11, 1999, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interests of the District of Columbia.

2. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned 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. Approval of this PUD and the change of zoning from C-2-A to C-2-B is not inconsistent with the Comprehensive Plan for the National Capital and the purposes of the Zoning Act.

4. The Commission takes note of the position of Advisory Neighborhood Commission 3E, and in its decision has accorded to the ANC the "great weight" consideration to which it is entitled.

5. The approval of the application will promote the orderly development of the site 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.

6. The development of this PUD is compatible with citywide goals, plans, and programs, and the development patterns in the area.

7. The 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 contained in this order, the Zoning Commission for the District of Columbia orders **APPROVAL** of this application for consolidated review of a planned unit development for Lots 807, 809, 812 and 817 in Square 1734 and a related map amendment. The approval of this PUD is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed in accordance with the plans prepared and materials submitted by the architectural firm of Cunningham and Quill Architects, marked as Exhibits Nos. 49 and 53, as modified by the guidelines, conditions and standards of this order.

2. The project shall be a primarily residential mixed-use development consisting of 48 residential units and a small retail/office component. The residential portion of the project will include 43 condominium units located in a mid-rise building, which is accessed from 41st Street, N.W. Five townhouse units are also included in the project. Three townhouses are located along Davenport Street, N.W. and the fourth and fifth townhouses are located along 41st Street. The small retail/office portion of the project will be located along and accessed solely from Wisconsin Avenue, N.W.

3. The total floor area ratio (FAR) of the project shall not exceed 4.5. The residential FAR of the project shall not exceed 3.7 and the commercial FAR shall not exceed 0.8, as shown on the plans marked as Exhibit Nos. 49 and 53 of the record.
4. The height of the project shall not exceed 65 feet, as shown on the plans marked as Exhibit Nos. 49 and 53 of the record.

5. The project shall provide approximately 75 parking spaces on two below-grade levels and a loading berth as shown in the plans. The project will include approximately 52 parking spaces on the B-1 parking level and approximately 23 parking spaces on the upper parking level. There shall be at least a 1:1 ratio of parking spaces to units in the residential portion of the project. The use of the commercial portion of the parking garage by residents of the project and their guests shall be in accordance with the Commercial Parking Level Management Plan, as shown in Exhibit 51 of the record.

6. The applicant shall be granted flexibility as follows:

   a) To vary the location and design of all interior components of the residential and commercial components of the project (including partitions, structural slabs, doors, columns, stairways, and mechanical rooms) provided that the variations do not change the exterior configuration of the building, as necessary to comply with all applicable codes or as required to obtain a final building permit.

   b) To shift the location of the doors to the retail uses in order to accommodate different retailer demands.

   c) To vary the number of residential units provided in the project, not to exceed a change of 5 percent, based on market demand for the residential units.

7. The applicant shall re-landscape and maintain, in general accordance with Exhibit 49 of the record of this case and the comments raised in a letter dated May 14, 1999 from the National Park Service included in Exhibit 54 of the record of this case, the triangular piece of land owned by the National Park Service (part of U.S. Reservation 470) across 41st street from the property, subject to the final approval of the design by the National Park Service.

8. The applicant shall exclude from the commercial portion of the project fast-food establishments, dry cleaning establishments, establishments that hold or intend to hold a liquor license (this restriction will not apply to a "family-style" restaurant), or establishments that operate 24 hours a day.

9. The applicant shall include a community room and office space within the project for use by ANC 3E and other community organizations, which will be accessed from Wisconsin Avenue.

10. All construction activity on the subject property shall be in accordance with the Construction, Development and Post-Construction Agreement between The applicant and the surrounding neighbors of the project, marked as Exhibit 60 of the record of this case.

11. The applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing District of Columbia residents for at least 51 percent of the jobs created by the project.

12. The applicant shall enter into a Memorandum of Understanding with the Department of Human Rights and Local Business Development in order to achieve, at a minimum, the goal of 35 percent participation by small, local and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance and security of the project to be created as a result of the project.

13. The applicant shall require that provisions are incorporated into the documents that convey title to the units on the fifth and sixth floors of the project which shall require those condominium owners to maintain the landscaping on the roof terrace in substantial accordance with the landscaping as shown in the plans as Exhibit 53 of the record of this case.

14. The applicant shall require that the condominium association documents will require the condominium association to be responsible for the maintenance of the triangular park owned by the National Park Service across 41st Street from the project, and the maintenance of the landscaping, plantings and trellis located on the southern terrace of the project.

15. The change of zoning from C-2-A to C-2-B for the subject property shall be effective upon the recordation of a covenant as required by 11 DCMR 2409.3, and discussed in paragraphs 16 and 17 of this order.

16. No building permit shall be issued for the PUD until the applicant has recorded a covenant in the land records of the District of Columbia, between the applicant and the District of Columbia, that is satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind The applicant and all successors in title to construct and use the

subject property in accordance with this order, or amendment thereof by the Zoning Commission.

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

18. This consolidated 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 11 DCMR 2408.8 and 2409.1. Construction shall start within three years of the effective date of this order.

19. Pursuant to D.C. Code Section 1-2531 (1991), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25 (1991), and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Regulations Division of DCRA to approve permits if the applicant fails to comply with any provision of D.C. Law 2-38 as amended.

Vote of the Zoning Commission taken at its public meeting on June 14, 1999: 5-0 (Angel F. Clarens, Anthony J. Hood, John G. Parsons, Herbert M. Franklin and Jerrily R. Kress, to approve).

This order was adopted by the Zoning Commission at its public meeting on September 13, 1999 by a vote of 4 – 0: (John G. Parsons, Anthony J. Hood, Herbert M. Franklin, and Angel F. Clarens, to adopt).

In accordance with the provisions of 11 DCMR 3028, this order shall become final and effective upon publication in the D.C. Register, that is, on OCT 8 1999.

ANGEL F. CLARENS
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

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