

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 04-24C
Z.C. Case No. 04-24C
RI Station, LLC
(Minor Modification to Approved Second-Stage Planned Unit Development
@ Square 3848, Lot 59)
May 23, 2016

Pursuant to notice, at its May 23, 2016, public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of RI Station, LLC (the “Applicant”) for a minor modification to Z.C. Order No. 04-24A (the “Second-Stage Order”), which approved a second-stage planned unit development (“PUD”) for Lot 59 in Square 3848 the “Property”). The Commission considered the Application pursuant to § 3030 of the Zoning Regulations of 1958, to which all subsequent citations refer unless otherwise specified. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PRIOR APPROVALS

1. Pursuant to Z.C. Order No. 04-24 (the “First-Stage PUD”), effective October 7, 2005, the Commission approved a First-Stage PUD with a Zoning Map amendment from the M Zone District to the C-2-B Zone District for the Property¹ to facilitate a mixed-use town center development (the “Project”) adjacent to the Rhode Island Avenue-Brentwood Metro Station organized around a “Main Street” running perpendicular to the Metrorail station, with three stories of residential apartments above ground-floor retail uses on both sides of the Main Street, including:
 - Approximately 271 rental apartments totaling approximately 354,860 square feet of gross floor area (“GFA”);
 - Approximately 70,000 square feet of retail uses, of which 7,000 square feet were set aside for non-credit, community businesses; and
 - Approximately 451 parking spaces.
2. Pursuant to the Second-Stage Order, effective September 28, 2007, the Commission approved a second-stage PUD for the Property² that modified the parameters of the first-stage order as follows:

¹ The first-stage order applied to Lot 233 and portions of Lots 234 and 235 of Parcel 131.

² Although the Second-Stage Order applied to Lots 220 and 221 in Parcel 130, this appears to be a mistake as the Application referred to Lots 220 and 221 in Parcel 131, which lots were subsequently divided into Lots 233-235 cited by the first-stage order. Lot 235 and part of Lot 233 of Parcel 131 were consolidated, together with Lot 61 of

- Approximately 271 rental apartments totaling approximately 322,000 square feet of GFA;
 - Approximately 70,000 square feet of retail uses, of which 7,000 square feet were set aside for non-credit, community businesses; and
 - Approximately 531 garage and on-street parking spaces.
3. Pursuant to Z.C. Order No. 04-24B, effective May 7, 2011, the Commission approved a minor modification to Condition No. 3 of the Second-Stage Order to allow office uses for up to 14,000 square feet of the 70,000 square feet of retail uses required by the Second-Stage Order, to allow for potential lease by the District of Columbia government for a community-service oriented use, such as a Department of Motor Vehicles or Tax Payer Services office.

PARTIES AND NOTICE

4. Other than the Applicant, the only party to the Second-Stage Order was Advisory Neighborhood Commission (“ANC”) 5B, the affected ANC at the time of the Second-Stage Order. At the time of the Application, however, the ANC boundaries changed so that the Property was in ANC 5C’s district.
5. The Commission received no requests for party status.
6. The Applicant served the Application on ANCs 5B and 5C on May 5, 2016, as indicated by the Certificate of Service submitted with the Application. (Exhibit [Ex.] 1.)

II. THE APPLICATION

7. The Application, filed on May 5, 2016, proposed to modify Condition No. 3 of the Second-Stage Order, as modified by Z.C. Order No. 04-24B, to:
- Increase to 21,000 square feet the 14,000 square feet authorized for office uses in the 70,000 square feet set aside for retail uses; and
 - Refine the type of office uses allowed in these 21,000 square feet from general office to customer service-oriented office uses such as a tax professional, a medical or dental office, an insurance provider, a local real estate office, or similar uses.
8. The Application stated that the proposed office space will:
- Have active storefront windows that would contribute to the lively pedestrian environment envisioned for the development;
 - Not alter the approved site plan and/or approved traffic circulation patterns;
 - Be consistent with Class A office uses elsewhere in the District;
 - Offer more patrons for the existing retail uses on the Property;
 - Increase the daytime population around the Project and bring vitality and diversity to the “Main Street” by reducing the amount of vacant ground-floor store frontage; and

Lot 130, into Square 3848, Lot 59 (the Property) by the plat recorded in Subdivision Book 202 at page 32 of the Surveyor of the District of Columbia.

- Be consistent with the overall vision of the Second-Stage Order that described the Project as a vibrant, Class A, mixed-use town center offering new community-serving commercial uses and high-quality mixed-income apartments.

III. RESPONSES TO THE APPLICATION

OP REPORT

9. The Office of Planning (“OP”) submitted a May 13, 2016, report (the “OP Report”) that recommended approval of the Application. (Ex. 5.)

ANC REPORT

10. Neither ANC 5B nor 5C submitted a written response to the Application.

CONCLUSIONS OF LAW

1. Section 3030.1 authorizes the Commission, in the interest of efficiency, to make minor modifications to final orders without a public hearing.
2. Section 3030.2 defines a minor modification as a modification “of little or no important or consequence.”
3. The Commission concludes that the Applicant satisfied the requirement of § 3030.6 to serve the Application on all parties to the original proceeding, in this case ANC 5B, as well as to ANC 5C, the current affected ANC.
4. The Commission concludes that because ANCs 5B and 5C failed to file responses to the Application within the seven days following service of the Application provided by § 3030.8, the Commission could consider the merits of the Application at its May 23, 2016, public meeting.
5. The Commission concludes that the Application qualifies as a minor modification within the meaning of § 3030.2 as it does not consequentially change the Second-Stage Order because the proposed increase of the portion of retail use for customer service-oriented uses is consistent with the intent of the Commission in approving the Second-Stage Order to authorize the Project as a mixed-use town center and would not substantially impair the Zoning Regulations and the Zoning Map. The Commission therefore concludes that the Application meets the requirement of § 3030.13.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

6. The Commission must give “great weight” to the recommendations of OP pursuant to § 13(d) of the Office of Zoning Independence Act of 1990, effective September 20, 1990. (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001); *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
7. The Commission found OP’s recommendations to approve the Application persuasive and concurred in that judgment.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

8. The Commission must give “great weight” to the issues and concerns raised in a written report of an affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)). To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
9. Since neither ANC 5B nor 5C submitted a response to the Application, there is nothing to which the Commission can give “great weight.”

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for a minor modification of Z.C. Order No. 04-24A, as modified by Z.C. Order No. 04-24B, by revising Condition No. 3, to read as follows (additions in **bold and underlined** text; deletions in ~~bold and strikethrough~~ text):

3. The Project shall be a mixed-use town center developed as depicted in the final plans approved in the second-stage application. The project will consist of approximately 370 rental apartments totaling approximately 322,000 square feet of gross floor area; 70,000 gross square feet of retail uses; additional ground floor uses for community businesses; and approximately 531 garage and on-street parking space. Up to ~~14,000~~ **21,000** gross square feet of the gross floor area reserved for retail uses may be used for **customer service oriented office use such as a tax professional, a medical or dental office, an insurance provider, a local real estate office, or other similar use.**

All other conditions of Z.C. Order No. 04-24A, as modified by Z.C. Order No. 04-24B, remain in effect and unchanged.

VOTE (May 23, 2016): 5-0-0 (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Peter G. May to **APPROVE**; Michael G. Turnbull to **APPROVE** by absentee ballot)

In accordance with the provisions of § 3028.9, this Order No. 04-24C shall become final and effective upon publication in the *D.C. Register*; that is, on October 2, 2020.

BY ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.