Government of the District of Columbia
OFFICE OF ZONING

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MEMORANDUM

TO: Arnold R Finlayson, Administrator
Office of Documents and Administrative Issuance

FROM: Sharon S Schellin
Acting Secretary to the Zoning Commission

DATE: September 28, 2005

SUBJECT: Publication for the Office of Zoning

2005 SEP 29 PM 3 32

Please publish the following in the *D C Register* on October 7, 2005

1 Z C Notice of Filing (Case No 70-16A),
2 Z C. Notice of Filing (Case No 05-30),
3 Z C Notice of Emergency Rulemaking (Case No 05-29),
4 Z C Notice of Public Hearing (Case No 05-22),
5 Z C. Notice of Public Hearing (Case No 05-29),
6 Z C Notice of Public Hearing (Case No 05-31),
7 Z C Order No. 04-24, and
8 Z C Order No 05-14

Attachments

[redacted] 05-14
[redacted] 17

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ZONING COMMISSION
District of Columbia
CASE NO.05-14
EXHIBIT NO.17

ZONING COMMISSION ORDER NO. 05-14
Z.C. Case No. 05-14
Consolidated Planned Unit Development
Non-Profit Community Development Corporation of Washington, D.C., Inc.
July 25, 2005

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on June 23, 2005 to consider an application from the Non-Profit Community Development Corporation of Washington, D C., Inc ("NPCDC" or the "Applicant") for consolidated review and approval of a Planned Unit Development ("PUD") pursuant to Chapter 24 of the D C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022, the procedures for contested cases For the reasons stated below, the Commission grants the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1 On May 13, 2005, the Applicant filed an application with the Zoning Commission for the District of Columbia for the consolidated review and approval of a PUD for the property located at 2750 14th Street, N W. (the "Site") [1] The application requested approval to construct a mixed-use building including an affordable housing component, a market-rate housing component, a child care center, and retail commercial space in the Columbia Heights neighborhood ("Project") The Site is zoned C-2-B, and no change of zone classification was requested

2. The Applicant submitted its Pre-Hearing Submission on May 16, 2005 .

3 At a special public meeting on May 23, 2005, the Zoning Commission decided to set-down the application for a public hearing. At the special public meeting, the Commission also agreed to waive its procedural rules that require submission of

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[1] The Applicant previously sought the relief requested in its PUD application in a variance application filed with the Board of Zoning Adjustment ("BZA"), BZA Case No 17302 After the BZA granted the variance relief, the Zoning Commission initiated a *sua sponte* review of the BZA's decision pursuant to 11 DCMR § 3011 At the same time that the Zoning Commission announced it was initiating a *sua sponte* review, the Commission offered the Applicant the opportunity to submit a PUD application requesting the same relief granted in the BZA proceeding and indicated it would consider the PUD application before it completed its *sua sponte* review of the BZA s decision The Commission will dispose of the *sua sponte* review in a separate order

documents, information, and requests for party status in advance of the hearing The Commission indicated it was willing to receive all required documents, evidence, and party status requests at the hearing The Commission also waived its procedural rule requiring a 20-day period between the receipt of a pre-hearing submission and advertisement of the Public Hearing Notice

4 After proper notice, the Zoning Commission opened the public hearing on June 23, 2005 and completed the public hearing that evening At the conclusion of the public hearing, the Commission took proposed action to approve the PUD application.

5 The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 1B, within which the Site is located

6 The Applicant is a not-for-profit corporation engaged in urban and neighborhood revitalization through the construction and renovation of housing in the District of Columbia Since its inception in 1994, NPCDC has built and renovated more than 350 units of housing, including apartments and single-family homes, in such neighborhoods as Anacostia, Columbia Heights, Petworth, and upper Georgia Avenue

7 Following the hearing and proposed action, the Commission referred the proposed action to the National Capital Planning Commission ("NCPC"). NCPC did not provide comment prior to July 25, 2005, the date set for the Commission to Zoning Commission to take final action on the PUD application. The Commission therefore considered the matter at its public meeting on July 25, 2005 and took final action to approve the application on that date

The Site and Surrounding Area

8 The Site is legally designated as at Lot 73, Square 2667, in the Columbia Heights neighborhood of the District This location is in Ward 1 and within the boundaries of ANC 1B, and has a street address of 2750 14th Street, N W

9 The land area occupied by the Site is approximately 24,000 square feet

10 The Site and the properties to the north and south on both sides of 14th Street, NW are zoned C-2-B This area of 14th Street consists of mainly medium- to high-density residential buildings and moderate-density commercial uses The neighborhood to the west of the Site is zoned R-5-B and consists of moderate-density residential uses

The Project

11 The Project is part of a larger revitalization of the 14th Street corridor of Columbia Heights being undertaken by the National Capital Revitalization Corporation

("NCRC"), an independent agency of the District government responsible for developing properties under its control to promote neighborhood revitalization.

12 NPCDC acquired the property from NCRC and proposed to develop the property with 56 residential condominiums, 20,000 square feet of non-residential space, and 77 underground parking spaces Twenty-eight of the 56 condominium units will be designated as affordable dwelling units, restricted for sale to purchasers earning between 30 and 80 percent of the area median income as defined by the United States Department of Housing and Urban Development.

13 The Applicant proposes to construct an 83,999-square-foot, 3.5 FAR, seven-story, mixed-use building The building will also contain retail space, a childcare center, and 77 underground parking spaces

14 NPCDC signed a ten year lease with Urban Development Associates to operate an 8,000-square-foot child care center in the building

15 NPCDC intends to lease the remaining 12,000 square feet of nonresidential space to commercial tenants such as cafes and retailers

16 NPCDC set aside $250,000 as a commercial rent subsidy for a locally owned and operating business tenant

Zoning Flexibility Sought

17. The Applicant requests relief from the 65-foot height restriction of the C-2-B district to construct a building with a height of 74.25 feet

18 The height flexibility sought by the Applicant is within the 90-foot height limit for PUDs located within C-2-B zone districts, pursuant to 11 DCMR § 2405.1. A portion of the additional height will be used to increase ground floor height, which the Applicant claims is necessary to attract upscale commercial tenants The other portion of additional height will be allocated to the market rate units, so as to make those units more attractive to market rate purchasers, without reducing the number of affordable residential units in the Project

Public Benefits that Warrant the Zoning Flexibility Sought

19 Several public benefits will result from Project particularly in the following public benefit categories as enumerated in 11 DCMR § 2403 9

(a) *11 DCMR § 2403 9(f) – Housing and affordable housing* The Project will provide a total of 56 residential condominiums Half of these condominiums will be sold at market rate The other half will be sold at prices affordable to families earning between 30 and 80 percent of the area median income The affordable and market rate units are interspersed and are indistinguishable from one another in terms of size and product

(b) *11 DCMR § 2403 9(g) – Social services/facilities* The Applicant signed a ten-year lease with Urban Development Associates to operate an 8,000-square-foot child care center in the building

(c) *11 DCMR § 2403 9(c) -- Effective and safe vehicular access* The Project will provide 77 underground parking spaces, which provides one space per residential condominium and another 21 spaces for commercial or residential use. This number of spaces provided is 51 spaces greater than the required 26 spaces The Project utilizes the existing network of alleys, rather than creating new driveways that would interrupt pedestrian flow on the sidewalk. The site is served well by public transportation. The Site is directly proximate to the 14th Street bus line, and the Columbia Heights Metro Station is three blocks to the north.

(d) *11 DCMR § 2403 9(i) – Uses of special value to the neighborhood or the District of Columbia as a whole* The Applicant set aside $250,000, which it will use to subsidize the rent of a locally-owned and operating small business in the building.

(e) *11 DCMR § 2403 9(j) – The proposed PUD substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan* The Project will provide 28 units of affordable housing and 28 units of market rate housing, which advances a central theme of the Housing Element of the Comprehensive Plan stimulating the production of housing In addition the Project advances many of the policies stated in the Housing Element of the Comprehensive Plan, including

- Use all available public and private resources to support programs designed to stimulate the construction of affordable housing by private non-profit housing providers (10 DCMR § 300 2(d))

- Designate as residential opportunity areas sites where significant housing development can appropriately occur (10 DCMR § 302 2(d))

- Establish as a matter of major governmental priority the production of housing for low- and moderate-income households (10 DCMR § 303 2(a)).

- Use Planned Unit Developments to encourage the construction or rehabilitation of additional multi-family housing at suitable locations (10 DCMR § 306 2(i))

- Work to achieve an adequate supply of child care facilities by allowing the establishment of new child care facilities in residential and mixed use areas (10 DCMR § 306 2(q))

In addition, the following Ward 1 Elements are furthered by this Project

- Participation of qualified neighborhood development organizations, and development of needed commercial and service establishments (10 DCMR §§ 1202 1 (f) and (m))

- Increasing daycare facilities to encourage the entry of Ward 1 residents into the workforce (10 DCMR §1203.1(c))

- Developing commercial areas of the ward along the 14th Street corridor to increase employment opportunities (10 DCMR § 1203 1(d))

- Encourages production of new housing to meet all levels of need in Ward 1 (10 DCMR § 1205 1(a))

- Section 1205 1(b) provides a housing objective to provide for the housing needs of low and moderate-income households (10 DCMR § 1205 1(b)).

- Targeting residential development opportunity areas where significant housing development can appropriately occur and encouraging multi-unit housing development along the 14th Street corridor (10 DCMR § 1206 1)

20 The project is acceptable in all other § 2403 9 categories

Consistency with the Comprehensive Plan

21. The Project is not inconsistent with the Comprehensive Plan. The site lies in the Columbia Heights Housing Opportunity Area, as shown on the Generalized Land Use Policies Map. This policy makes the development of residential uses a priority in this area of the District As noted in the preceding discussion, the project wills also further important objectives of the Ward 1 Elements

Impact of Project

22 The PUD project will have favorable effects on the surrounding area The additional height requested is well within the 90-foot height limitation for PUDs in the C-2-B zone district, and the Commission agrees with the Office of Planning that the additional height will have a favorable impact on the surrounding area by allowing for higher quality retail in the commercial space of the building and by making the affordable and market rate housing components more attractive to potential purchasers, thereby allowing for a higher percentage of affordable housing within the Project

Office of Planning Report

23 By report dated June 10, 2005 and by testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the PUD OP stated that

the Project, "is superior to that which would [be] constructed as a matter of right; the amenities are superior and provide significant public benefit, especially the 50% affordable housing component and the [P]roject will contribute to the overall vitality of the 14th Street corridor "

24 OP also concluded that the Project is not inconsistent with the Comprehensive Plan

Advisory Neighborhood Commission 1B

25 By letter dated June 6, 2005, Advisory Neighborhood Commission 1B stated that it voted unanimously to support approval of the Project ANC 1B's letter stated that it "strongly endorses the 50% affordable component presented [by the Project], and strongly believes the additional height requested for the retail level is critical towards attracting better neighborhood serving tenants." The ANC further requested that the Commission do everything possible to expedite processing of the PUD.

CONCLUSIONS OF LAW

PUD

1 Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits that cannot be achieved under matter-of-right development 11 DCMR § 2400 1 The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400 2

2 Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a consolidated PUD The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, and courts

3 The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations in that it contributes affordable housing, child care facilities, and high quality retail to an area designated as a housing opportunity area, and which is currently underserved by child care facilities and neighborhood-friendly retailers

4 The proposed PUD meets the minimum area requirements of § 2401 1 of the Zoning Regulations

5 The impact of the project on the surrounding area is acceptable and its impact on the operation of District services is beneficial

6. The Project's public benefits are a reasonable trade-off for the zoning flexibility requested on the site

7 Approval of this PUD is not inconsistent with the Comprehensive Plan

8 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 Zoning Map of the District of Columbia.

General Findings

9 The Commission is required under § 5 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)), to give great weight to OP recommendations The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the application persuasive

10 Under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Code § 1-309.10(d)(3)(a)), the Commission must give great weight to the issues and concerns raised in the written report of the affected Commission

11 ANC 1B strongly supported the PUD and stated it believed the additional height requested was necessary to attract commercial tenants to the Project that would positively serve the neighborhood The Commission has carefully considered the ANC's recommendation for approval and concurs with its recommendation.

12 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 the Applications for consolidated review of a Planned Unit Development to construct the mixed use building on property located at 2750 14th St , N W (Lot 73, Square 2667) This approval is subject to the following guidelines, conditions and standards

1 The PUD shall be developed in accordance with the plans prepared by Morris Architects, dated June 13, 2003, marked as Exhibit 5, in the record, as modified by the guidelines, conditions, and standards herein

2. The Applicant shall have flexibility with the design of the PUD in the following areas

   a. To vary the location and design of all interior components provided that the variations do not materially change the exterior configuration of the structure,

   b To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and

   c To make refinements to exterior materials, details and dimensions, railings, roof, architectural embellishments and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals

3. No zoning relief has been granted to the Applicant other than the height flexibility expressly stated in this Order

4. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Attorney General 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 on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.

5 The Office of Zoning shall not release the record of this case to the Zoning Division of the Department of Consumer and Regulatory Affairs until the Applicant has filed a copy of the covenant with the records of the Zoning Commission

6 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, an application must be filed for a building permit Construction shall begin on the facility within three years after the effective date of this Order

7 The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D C Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions 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, familial status, family responsibilities, matriculation, political affiliation disability, source of income, or place of residence or business Sexual harassment is a form of sex discrimination that is also prohibited by the Act In

addition, harassment based on any of the above protected categories is also prohibited by the Act Discrimination in violation of the Act shall not be tolerated Violators shall be subject to disciplinary action The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order

8 In accordance with the plans and materials noted above, the approved PUD shall include 56 residential units with approximately 77 underground parking spaces. At its highest point, the roofs of the buildings will be 74.25 feet tall

9 The Project will include 28 units available for sale as affordable units restricted for sale to purchasers earning between 30 and 80 percent of the area median income as defined by the United States Department of Housing and Urban Development

10 The Project will include an 8,000-square-foot child care center

On June 23, 2005, the Commission voted to approve the PUD application by a vote of 5-0-0 (Carol J. Mitten, Kevin L. Hildebrand, Anthony J. Hood, John G. Parsons, and Gregory N. Jeffries to approve)

The Order was adopted by the Zoning Commission at its public meeting on July 25, 2005, by a vote of 5-0-0 (Anthony J Hood, John G Parsons, Carol J Mitten, Kevin L Hildebrand, and Gregory N Jeffries to approve)

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 _____