

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

THURSDAY

JANUARY 9, 2003

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice, at 6:30 p.m., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN, Chairperson
ANTHONY J. HOOD, Vice Chairperson
PETER G. MAY, Commissioner

ZONING COMMISSION STAFF PRESENT:

ALBERTO BASTIDA, Secretary
SHARON SANCHEZ, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Steven Cochran, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Corey Buffo, Esq.

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P-R-O-C-E-E-D-I-N-G-S

6:34 p.m.

CHAIRPERSON MITTEN: On the record. Good evening ladies and gentlemen. This is a public hearing of the Zoning Commission of the District of Columbia for Thursday, January 9, 2003. My name is Carol Mitten. Joining me this evening are Vice Chairman Anthony Hood and Commissioner Peter May.

Notice of today's hearing was published in the DC Register on November 29, 2002. This hearing will be conducted in accordance with the provisions of 11 DCMR Section 3022 which are the procedures for contested cases. The subject of this hearing is Zoning Commission Case Number 02-43.

This application is a request by Medstar Health Incorporated, The Washington Hospital Center which is the owner of the property at 110 Irving Street, N.W. for second stage approval of a planned unit development under Chapter 24 of the District of Columbia Zoning Regulations 11 DCMR. Copies of today's hearing announcement are available to you and are located on the table near the door.

The order of procedure will be as follows.

Preliminary matters followed by the presentation of

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1 the Applicant's case, report by the Office of Planning,
2 reports of other agencies, report of the affected ANC,
3 in this case it is ANC-5C, parties and persons in
4 support, parties and persons in opposition, and rebuttal
5 by the Applicant.

6 The following time constraints will be
7 maintained in this hearing. The Applicant will have
8 up to one hour. Parties will have 15 minutes.
9 Organizations will have five minutes. Individuals will
10 have three minutes. The Commission intends to maintain
11 these time limits as strictly as possible in order to
12 hear the case in a reasonable period of time. The
13 Commission reserves the right to change the time limits
14 for presentations if necessary and notes that no time
15 shall be seated.

16 Parties may at any time object to any
17 question posed to a witness by another party or to
18 evidence sought to be introduced into the record if it
19 is irrelevant, immaterial or unduly repetitious. The
20 Commissioners as well may request that such testimony
21 or evidence not be received or that such evidence be
22 struck from the record.

23 All persons appearing before the Commission
24 are to fill out two witness cards. These cards are

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1 located on the table by the door. Upon coming forward
2 to speak to the Commission, please give both cards to
3 the Reporter who is sitting to our right. All
4 individuals or organizations that would like to testify
5 please sign the witness list located on the table at
6 the entrance.

7 The decision of the Commission in this case
8 must be based exclusively on the public record. To
9 avoid any appearance to the contrary, the Commission
10 requests that persons present not engage the members
11 of the Commission in conversation during a recess or
12 at any other time. Staff will be available to discuss
13 procedural questions throughout the hearing.

14 Please turn off all beepers and cell phones
15 at this time so as not to disrupt these proceedings.

16 At this time the Commission will consider any
17 preliminary matters. Mr. Bastida, any preliminary
18 matters.

19 SECRETARY BASTIDA: Yes. The Staff has
20 two preliminary matters. Both are related to a waiver
21 of one is admitting the Office of Planning report into
22 the record because it was filed only last Friday. The
23 other one is we have just received the Department of
24 Transportation of District of Columbia report. We

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1 would like to request a waiver of the Commission's rules
2 to admit it into the record. The report says DDOT has
3 no objection to the information provided to the
4 Applicant --

5 CHAIRPERSON MITTEN: That's fine. Let me
6 see if there is any objection to waiving it in first
7 before you read it.

8 SECRETARY BASTIDA: I'm sorry. Right.

9 CHAIRPERSON MITTEN: Any objection to
10 waiving the late filing of the Office of Planning report
11 or the Department of Transportation report?

12 VICE CHAIRPERSON HOOD: No objection.

13 CHAIRPERSON MITTEN: All right. Without
14 objection, and I believe you have circulated copies so
15 I don't know that you need to read it aloud.

16 SECRETARY BASTIDA: Well, just for the
17 public.

18 CHAIRPERSON MITTEN: I think we can satisfy
19 ourselves. If the public would like a copy, they could
20 approach.

21 SECRETARY BASTIDA: Okay. Thank you.

22 CHAIRPERSON MITTEN: Thank you. Anything
23 else?

24 SECRETARY BASTIDA: That's all the Staff

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1 has. Thank you.

2 CHAIRPERSON MITTEN: Thank you. All
3 individuals wishing to testify, would you please rise
4 to take the oath? Ms. Sanchez, go ahead.

5 MS. SANCHEZ: Please raise your right hand.
6 WHEREUPON,

7 MYLES LASH and GERALD OUDENS
8 were called as witnesses and, having been first duly
9 sworn, were examined and testified as follows:

10 CHAIRPERSON MITTEN: Mr. Moore, whenever
11 you are ready.

12 MR. MOORE: Good evening, Chairman Mitten
13 and Members of the Commission. I'm Jerry Moore, the
14 Venable law firm, the Counsel to the Applicant in this
15 proceeding. With me is Myles Lash, the President for
16 the Washington Hospital Center and Gerald Oudens who
17 is an architectural consultant to Medstar.

18 Both have prepared detailed testimony and
19 presentation for the Commission for this evening, but
20 both will choose to submit that testimony for the record
21 unless the Commission directs otherwise. They do so
22 because in the record there are documents and testimony
23 necessary to support the first stage approval including
24 numerous statements of support from the surrounding

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1 property owners, ANC-4D, ANC-5C, and community
2 residents, because Order Number 694 approving the first
3 stage PUD is in the record, that a second stage
4 submission that is indexed to direct the reader to the
5 sections that demonstrate compliance with Section
6 2406.12 of the Zoning Regulations, and compliance with
7 Order Number 694 is in the record.

8 Also in the record is a statement discussing
9 how and where the documents submitted in the record
10 support the second stage approval. There is a letter
11 in the record from ANC-4D in support of second stage
12 approval. There's a letter from the Office of Planning
13 supporting the second stage approval. There's a
14 memorandum from the Department of Transportation that
15 raises no objection to second stage approval. Also
16 there is no opposition to the second stage approval from
17 any party or person.

18 The Applicant states for the record that
19 it has no objections to the conditions set forth in the
20 first stage approval order. If there are questions,
21 the Applicant is prepared to respond. If not, the
22 Applicant believes that the record is complete and
23 unopposed and respectfully urges the Commission to
24 approve the application for second stage approval at

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1 its very first convenience, hopefully this evening.
2 Thank you.

3 CHAIRPERSON MITTEN: All right. What was
4 it that you had that you were going to submit that the
5 individuals Mr. --

6 MR. MOORE: Mr. Lash has written testimony
7 that he was going to give. We are content to submit
8 it to the record. Mr. Oudens, the architectural
9 consultant and expert, has a Powerpoint presentation
10 that he can submit the slides to the record unless the
11 Commission directs otherwise.

12 CHAIRPERSON MITTEN: All right. Well, I
13 guess logistically if we accept those things in I presume
14 you would want us to read them and digest them before
15 we would render a decision. Or do you consider them
16 somewhat duplicative?

17 MR. MOORE: I consider them supplementary
18 to the documents that are already in the record. This
19 case is very old.

20 CHAIRPERSON MITTEN: Right.

21 MR. MOORE: I don't think you will see
22 anything that is terribly new.

23 CHAIRPERSON MITTEN: Okay. Are we
24 satisfied then? Does anyone want a presentation by the

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1 Applicant or are we satisfied standing on the record?

2 VICE CHAIRPERSON HOOD: I think standing
3 on the record, Madam Chair, would be fine with me.

4 CHAIRPERSON MITTEN: All right. Then I'll
5 just ask are there any questions that you would like
6 to put to the Applicant?

7 (No response.)

8 CHAIRPERSON MITTEN: This is going
9 quickly. Okay. Then we'll see how much time Mr.
10 Cochran needs to make his presentation because we are
11 ready for the report by the Office of Planning.

12 MR. COCHRAN: For the record, my name is
13 Steven Cochran with the Office of Planning, Madam Chair.
14 The Office of Planning is pleased to stand on the record
15 which has been established since the time the Chair was
16 in grade school.

17 CHAIRPERSON MITTEN: Well, that was a long
18 time ago. I don't think we've been dealing with this
19 quite that long. That's fine. Thank you. Any
20 questions for Mr. Cochran on the Office of Planning
21 report?

22 (No response.)

23 CHAIRPERSON MITTEN: No questions. Did
24 you have any questions?

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1 MR. MOORE: No.

2 CHAIRPERSON MITTEN: As Mr. Bastida noted,
3 we have a submission from the Department of
4 Transportation. We don't have a recent submission from
5 ANC-5C on the second stage PUD. Did you have anything
6 on the second stage, Mr. Moore.

7 MR. MOORE: I can state for the record that
8 we did attend the ANC-5C meeting in early November of
9 last year. At that time, the commission did in fact
10 vote to send a letter stating their support for this
11 second stage approval of this application subject to
12 the hospital sending over two documents to them. Those
13 two documents were sent. I cannot tell you why you do
14 not have a letter in the record from them.

15 CHAIRPERSON MITTEN: Okay. Well, it's
16 good to know that they are in support, but without the
17 letter they won't be accorded great weight. Then are
18 there any persons who would like to testify in support
19 here tonight?

20 (No response.)

21 CHAIRPERSON MITTEN: Any persons who would
22 like to testify in opposition?

23 (No response.)

24 CHAIRPERSON MITTEN: All right. Any last

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1 thoughts, Mr. Moore.

2 MR. MOORE: We're hopeful that this case
3 could be ended this evening. If it were to end this
4 evening with a preliminary decision by the Commission,
5 we were in a position to send the proposed order to NCPC.

6 The Commission would be in the position to finally rule
7 on this at its February meeting I believe. Mr. Bastida
8 can correct me if I am wrong. We do have covenants that
9 are already drawn up. I think the record is quite strong
10 of the need for the Hospital Center to move forward at
11 the earliest possible date.

12 CHAIRPERSON MITTEN: Okay. Thank you.
13 Mr. Bastida, what is the timing like to get this on for
14 our February agenda if we proceed now.

15 SECRETARY BASTIDA: It's possible.

16 CHAIRPERSON MITTEN: Okay.

17 SECRETARY BASTIDA: As long as I receive
18 that order tomorrow almost. Well, I had to make the
19 referral to NCPC by last Monday. So I can ask for a
20 grace period, but I need it maybe not tomorrow but Monday
21 morning.

22 MR. MOORE: Monday morning.

23 SECRETARY BASTIDA: Okay. That's 12 noon.

24 (Laughter.)

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1 MR. MOORE: That's Eastern Standard Time.

2 SECRETARY BASTIDA: Okay. Thank you.

3 VICE CHAIRPERSON HOOD: Madam Chair, if I
4 could. I would like to make a motion that we approve
5 the second stage PUD of Zoning Commission case number
6 02-43.

7 CHAIRPERSON MITTEN: Second? Is there
8 anything you would like to say in support of your motion,
9 Mr. Hood.

10 VICE CHAIRPERSON HOOD: I think that the
11 record has been clear on my position. I don't want to
12 rehash any old conversations. I think the transcript
13 and the record is complete. I think that they have done
14 the wishes of this Commission and what we have asked
15 for. I don't want to go there. But anyway I will just
16 stand on that. Thank you.

17 CHAIRPERSON MITTEN: Thank you. I agree.
18 We've asked you to conform to the PUD for certain
19 reasons. We're to the point where we want it to be when
20 we started. Now that we are here, we need not belabor
21 the process any further. Anything?

22 VICE CHAIRPERSON HOOD: Let me just say
23 this, Madam Chair. I don't think I was actually the
24 person who should have spoken on that because of the

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1 issues that happened earlier. I think it came better
2 coming from you.

3 CHAIRPERSON MITTEN: Thank you.

4 VICE CHAIRPERSON HOOD: Thank you.

5 CHAIRPERSON MITTEN: Any further
6 discussion?

7 (No response.)

8 CHAIRPERSON MITTEN: All those in favor
9 please say aye.

10 (Chorus of ayes.)

11 CHAIRPERSON MITTEN: Those opposed please
12 say no.

13 (No response.)

14 CHAIRPERSON MITTEN: Ms. Sanchez, would
15 you record the vote?

16 MS. SANCHEZ: Yes. Staff would record the
17 vote three to zero to two. Commissioner Hood moving,
18 Commissioner Mitten seconding, Commissioner May in
19 favor of approving Case Number 02-43 for proposed
20 action. Commissioners Parsons and Hannaham not
21 present, not voting.

22 CHAIRPERSON MITTEN: Thank you. And Mr.
23 Moore is going to run off now and work on that order.

24 MR. MOORE: Absolutely. Thank you so much

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1 to the Commission. It's been a long process, but thank
2 you.

3 CHAIRPERSON MITTEN: I now declare this
4 public hearing adjourned. Off the record.

5 (Whereupon, the above-entitled matter concluded at 6:47

6 p.m.)

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