

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION ORDER NO. 03-03B
ZONING COMMISSION CASE NO. 03-03B
(Modification to Approved Planned Unit Development for
Capitol Gateway Estates)
September 11, 2006**

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on July 17, 2006 to consider requested modifications to the Capitol Gateway Estates planned unit development (“PUD”) approved in Zoning Commission Order No. 03-03. The Zoning Commission considered the modifications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulation (“DCMR”). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the requested modifications.

FINDINGS OF FACT

Application, Parties, and Hearing

1. On December 16, 2005, the District of Columbia Housing Authority and the associated private development team of A&R/THC LLC and East Capitol Gateway LLC (the “Applicant”) filed a request for a modification to the approved PUD in Zoning Commission Case No. 03-03 for Capitol Gateway Estates, located on a large site on multiple squares in the vicinity of East Capitol Street and Southern Avenue, S.E. The requested modifications were to correct several inaccurate lot numbers from the second-stage PUD order and to eliminate the approved community building as specified in Condition No. 6 of Z.C. Order No. 03-03 and instead to construct 12 townhouses on the site.
2. The Commission voted to set the application down for a public hearing at its meeting on April 20, 2006. After proper notice, the Commission held a public hearing on July 17, 2006.
3. The parties in the case were the Applicant and Advisory Neighborhood Commissions (“ANC”) 7C and 7E, within which the PUD is located.
4. At the conclusion of the public hearing on July 17, 2006, the Commission took proposed action to approve the requested modification.

5. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the District Charter. NCPC, by action dated August 31, 2006, found that the proposed modification would not adversely affect any federal interest or be inconsistent with the Comprehensive Plan for the National Capital.
6. The Zoning Commission took final action to approve the requested modification on September 11, 2006.

The Request for Corrected Lot Numbers

7. The Applicant’s statement indicated that there were two sources of errors in some of the lots indicated in Order No. 03-03. The first was simply that the retail center proposed in the original PUD has been delayed, and the plans for it were withdrawn from the original PUD. However, Lot 51 in Square 5272, which was part of the commercial site, inadvertently was not removed from Order 03-03. Accordingly, this lot should be deleted from the description of the approved PUD.
8. The second correction concerns the southern portion of Square 5246, bounded by East Capitol Street, 58th Street, 57th Place, and Clay Street, N.E. The southern part of this square is also part of the future commercial part of the PUD, but the northern part is within the approved, residential PUD. Two lots at the boundary between the residential and commercial areas should have been listed in the residential PUD: Lots 50 and 66. With these additions, the correct listing of the applicable lots will be Square 5246, Lots 50-56 and 66-78.
9. A companion correction is needed with respect to Square 5246 as shown on the zoning map that accompanies Order No. 03-03. The listing of PUD lots in Square 5246 to the right of the map states, “41-78.” However, Lots 41-49 and 57-65 should be excluded, because these lots are south of the residential boundary line and will be part of the future commercial PUD. The revised listing should be “Square 5246, Lots 50-56, 66-78.” A corrected version of the zoning map for Square 5246 was submitted by the Applicant for adoption in this proceeding.

The Requested Modification to Condition No. 6

10. Condition No. 6 in Order No. 03-03 states, “The community center building shall be constructed according to the plans submitted as exhibit 27 of the record. The building shall have a height not to exceed 25 feet and a gross floor area not to exceed 16,000 square feet. The site shall provide 33 off-street parking spaces.” The site for the community center building was in Square 5280 and oriented to the southeast corner of the intersection of East Capitol Street and 56th Place, S.E.
11. The Applicant’s written submissions and testimony at the public hearing in this proceeding requested that 12 townhouses are proposed to be constructed on the site identified in Condition No. 6, rather than the community center building. The Applicant

indicated that the community center was not needed or financially supportable because nearly all of the functions that were intended to be housed in the building had already been located elsewhere or would be accommodated elsewhere.

12. The East Capitol View Community Development Corporation (“CDC”) and the East Capitol View Center for Change were intended to be the lead occupants in the community center building. The CDC had programmed space for offices, classrooms (including computer training), and a conference room.
13. The CDC also managed the Community Supportive Services Program, which provided counseling and training in life skills for former public housing residents. This HOPE VI program no longer receives funding, as its mission is substantially complete. The space for the supportive services program and the CDC’s office space related to it, are no longer needed.
14. The CDC is currently located in a townhouse and will move to the rental tower building at 5929 East Capitol Street, S.E. (one block to the east of the community center site) in the forthcoming Capitol Gateway Towers PUD application as its permanent location in Capitol Gateway Estates.
15. The Center for Change and its Youth Services Program also now have their own building, so that they no longer require space in a community building.
16. The other major function that was proposed for the community building was a child development center. The daycare provider previously identified has relocated permanently to the Wheeler Creek community, reflecting in part the fact that there is no demand for daycare services until there are residents at Capitol Gateway Estates. A daycare center for the Capitol Gateway Estates PUD will be located within the 10-acre retail-residential component of the site to be developed, after PUD approval, on the north side of East Capitol Street in Square 5276, directly across East Capitol Street from the rental towers. The daycare space will be designed to the specifications of the selected daycare provider.
17. The Applicant’s architect presented the plans for the proposed 12 townhouses that will occupy the site formerly slated for the planned community center. He indicated that they will be typical of the 62 townhouses approved as part of the larger Capitol Gateway Estates PUD and that associated landscaping will also be typical of the overall PUD pattern. The houses will be three stories high and will include both rental and ownership units.
18. Ten townhouses will front along East Capitol Street (Lots 207-216), and two semi-detached dwellings will front on 56th Place (Lots 205 and 206). Residences along East Capitol Street will be set back at least 30 feet from the curb, with front access provided by a three-foot-wide concrete sidewalk. These residences will have rear-loaded garages, accessed from a 15-foot-wide private alley. The semi-detached pair of houses on 56th

Place will be set back 20 feet from the curb and will have front-loaded garages because of the open space behind these lots and south of Lot 205.

19. The Applicant indicated that there is an interior lot behind the townhouses fronting on East Capitol Street that will be devoted to open space. At present there are no specific plans for equipment, structures, or fencing, and the Applicant's preference is to leave the decision as to the long-term character of the space to be decided by the homeowners' association. A future application for a modification of the PUD will be needed to accommodate any changes in the treatment and use of the open space, such as with respect to landscaping, the installation of any fencing, and controls on public access.

Office of Planning Report

20. By report dated June 30, 2006, the Office of Planning ("OP") recommended approval of the Application, noting that constructing the 12 townhouses in place of the community center "meets the PUD standards outlined in § 2403 and is in accordance with the intent of the Zoning Regulations and the 2nd stage PUD." (p. 2) OP testified that it preferred that the open space referenced by the Applicant be maintained as accessible to the public.

Advisory Neighborhood Commissions 7C and 7E

21. Neither ANC 7C nor 7E filed a report on this Application.

Public Testimony

22. There was no testimony by individuals or organizations at the public hearing.

CONCLUSIONS OF LAW

1. Under § 2409.9 of the Zoning Regulations, any modification to a PUD that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Zoning Commission. The proposed modification shall meet the requirements for a second-stage application, except for minor modifications and technical corrections as provided for in § 3030 of the Zoning Regulations. This application was accordingly processed as a second-stage application.
2. The Zoning Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the second-stage approval. Accordingly, the Commission grants approval to this second-stage application in accordance with § 2408.6 of the Zoning Regulations.
3. The Commission is required under D.C. Code 2001 Ed. § 1-309.10(d) to give great weight to the issues and concerns of the affected ANCs. Neither of the affected ANCs submitted a report in this proceeding.

4. The requested modifications are 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 requested modification to the PUD. The approval is subject to the following amendments to Z.C. Order No. 03-03:

1. Amend the listing of lots and squares in Findings of Fact and in the Decision section of Order No. 03-03 so as to eliminate Lot 51 in Square 5272 and to add Lots 50 and 66 in Square 5246, and revise the last sentence of Finding of Fact No. 1 in Order No. 03-03 to read as follows: "The property is identified as Lots 50-66 and 66-78 in Square 5246; Lot 53 in Square 5279; Lots 99-114 and 118-204 in Square 5280; and Lots 36-92, 96-98, and 101-139 in Square 5281 (the "PUD Site")."
2. Revise the first paragraph in the Decision section of Order No. 03-03 to read as follows: "In consideration of the Findings of Fact and Conclusions of Law stated herein, the Zoning Commission orders **APPROVAL** of the second-stage (final) PUD for property located near East Capitol Street and Southern Avenue, S.E., specifically Lots 50-66 and 67-78 in Square 5246; Lot 53 in Square 5279; Lots 99-114 and 118-204 in Square 5280; and Lots 36-92, 96-98, and 101-139 in Square 5281."
3. Adopt the corrected Zoning Map for Square 5246 that accompanies this Order.
4. Condition No. 6 in Z.C. Order No. 03-03 authorizing construction of a community center building is deleted and is replaced by the following new Condition No. 6:

"6. Pursuant to Zoning Commission Order No. 03-03B, on the site of the originally approved community center building in Square 5280, 10 row dwellings and two semi-detached dwellings and associated open space shall be constructed in accordance with the plans submitted as Exhibit 21 of the record, provided that any changes made to the site plan dated July 17, 2006 shall require approval of the Zoning Commission."
5. Amend the development tabulation in Condition No. 4 of Order No. 03-03 to show that the PUD now includes 124 semi-detached dwellings and 72 rowhouses, and a total of 238 dwelling units.
6. Amend Condition No. 5 of Order No. 03-03 to provide that "there shall be a minimum of 238 on-site and curbside parking spaces."

For the reasons stated above, the Commission concludes that the Applicant has met the burden of proof, and it is hereby **ORDERED** that the application is **GRANTED**.

The Zoning Commission **APPROVED** the application at the close of the public hearing on July 17, 2006, by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve; John G. Parsons, having not participated, not voting).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on September 11, 2006 by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve; John G. Parsons, having not participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on DEC - 1 2006.



CAROL J. MITTEN
Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



Z.C. CASE NO.: 03-03B

DEC 05 2006

As Secretary to the Zoning Commission, I hereby certify that on _____ copies of this Z.C. Order No. 03-03B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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ATTESTED BY:

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Secretary to the Zoning Commission
Office of Zoning