

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



**ZONING COMMISSION ORDER NO. 04-24B**  
**ZONING COMMISSION CASE NO. 04-24B**  
**(Minor Modification to Approved Second-Stage Planned Unit Development for**  
**Mid-City Urban LLC and A&R Development Corp.)**  
**May 12, 2008**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the “Commission”) was held on May 12, 2008. At the meeting, the Commission approved an application from Rhode Island Avenue Metro, LLC, a partnership of Mid-City Urban, LLC and A&R Development Corp., (the “Applicant”) for a minor modification to an approved planned unit development (“PUD”) for property identified as Lot 59 in Square 3848 (formerly part of Parcel 130 and Lots 220-221) located in the Brentwood neighborhood of Ward 5, pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations (“Modification Application”). The Commission determined that the Modification Application was proper before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations.

**FINDINGS OF FACT**

1. By Z.C. Order No. 04-24A, effective September 28, 2007 (“Order”), the Commission approved a second-stage PUD for property then described as part of Parcel 130 and Lots 220-221, in Square 3848. This property was subsequently re-subdivided and is currently described as Square 3848, Lot 59. The Order approved the construction of a mixed-use town center immediately adjacent to the Rhode Island Avenue-Brentwood Metro Station comprised of approximately 270 rental apartments with a gross floor area totaling approximately 322,000 square feet, and approximately 70,000 square feet of space devoted to retail uses. The development is 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 Main Street. Seven thousand gross square feet of the retail floor area is set aside for non-credit, community businesses. The project also includes approximately 531 garage and on-street parking spaces. Advisory Neighborhood Commission (“ANC”) 5B was an automatic party in that case as the affected ANC. There were no other parties.
2. On May 1, 2008, the Applicant submitted an application requesting a minor modification to Z.C. Order No. 04-24A. The Applicant requested the ability to replace up to 20% of the 70,000 square feet of gross floor area set aside for retail uses with floor area dedicated to office use. The Applicant indicated the reason for the request was that the District of Columbia government is interested in leasing office space for a community-service oriented use, such as a local Department of Motor Vehicles or Tax Payer Services office.

3. Office uses at this location would support several City goals including spurring economic development, providing convenient City services, and creating new jobs in an underserved community. Further, a daytime office population will support the PUD retail uses and bring vitality to the project Main Street. There was no opposition to the modification. ANC 5B was served by the Applicant with the Modification Application.
4. By letter dated May 1, 2008, ANC 5B Chairman William C. Shelton wrote to express his support for the project. The letter stated it was written on behalf of ANC 5B; however, it did not state when the ANC held the public meeting to consider the application, whether the ANC gave proper notice of that meeting to the public, the number of ANC members that constitute a quorum, the number of ANC Commissioners who were present at the meeting, whether the ANC voted on the recommendation, and the results of that vote.
5. The Office of Planning (“OP”) submitted a report dated May 9, 2008 in support of the Modification Application, stating that OP believed the modification would not otherwise diminish the benefits and amenities associated with the original PUD approval, and that the requested flexibility would enable this project to move forward to completion at the earliest possible date.

### **CONCLUSIONS OF LAW**

Upon consideration of the record in this application, the Commission finds that the proposed modification is minor and consistent with the intent of previously approved Z.C. Order No. 04-24A. The Commission is of the opinion that approving the Modification Application is appropriate and not inconsistent with the District of Columbia Comprehensive Plan (10 DCMR). The Commission further concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations and Zoning Act.

The Commission is required under § 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) “ANC Act”), to give great weight to the written recommendation of the affected ANC, provided that the ANC has considered the action at a properly noticed meeting that is open to the public. The Commission received a letter from ANC 5B Chairman William Shelton expressing support for the Modification Application. However, Chairman Shelton’s letter did not satisfy the requirements of the Zoning Regulations that all written ANC reports state when the public meeting of the ANC to consider the application was held (11 DCMR § 3012.5(b)), whether proper notice of that meeting was given by the ANC (11 DCMR § 3012.5(c)), the number of members of the ANC that constitute a quorum, the number of members present at the meeting (11 DCMR § 3012.5(d)), and the vote on the motion to adopt the report of the ANC (11 DCMR § 3012.5(g)). Because these requirements merely mirror the prerequisites stated in § 13(d) of the ANC Act, the Commission cannot afford great weight to the recommendation stated in the letter.

Nevertheless, the Commission notes the support of Chairman Shelton and agrees with him that the application should be granted.

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), to give great weight to OP's recommendations. As discussed in paragraph 4 above, OP recommended approval of the modification request and the Commission concurs in its recommendation, and therefore gives OP the great weight to which it is entitled.

**DECISION**

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a minor modification of an approved PUD. Condition 3 of Z.C. Order No. 04-24A is hereby revised to read as follows (new language added through this modification is shown in bold and underlined text):

3. The Project shall be a mixed-use town center development as depicted in the final plans approved in the second-stage application. The project will consist of approximately 270 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 spaces. **Up to 14,000 gross square feet of the gross floor area reserved for retail uses may be used for office use.**

On May 12, 2008, upon the motion of Chairman Hood, as seconded by Vice Chairman Jeffries, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, Curtis L. Etherly, and Peter G. May to approve; Michael G. Turnbull not present, not voting).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the D.C. Register; that is, on May 13, 2011.

  
\_\_\_\_\_  
ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION

  
\_\_\_\_\_  
JAMISON L. WEINBAUM  
DIRECTOR  
OFFICE OF PLANNING

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



Z.C. CASE NO.: 04-24B

MAY 7 2011

As Secretary to the Commission, I hereby certify that on \_\_\_\_\_ copies of this Z.C. Order No. 04-24B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Cynthia Giordano, Esq.  
Saul Ewing, LLP  
2600 Virginia Avenue, N.W.  
Suite 1000 – The Watergate  
Washington, D.C. 20037-1922
3. ANC 5B  
c/o Harbor Light Center  
2100 New York Avenue, NE  
Washington, DC 20002
4. Commissioner Regina James  
ANC/SMD 5B03  
1363 Adams Street, N.E.  
Washington, DC 20018
5. Gottlieb Simon  
ANC  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004
6. Councilmember Harry Thomas, Jr.
7. Office of Planning (Harriet Tregoning)
8. DDOT (Karina Ricks)
9. Zoning Administrator (Matt LeGrant)
10. Melinda Bolling, Acting General Counsel  
DCRA  
1100 4<sup>th</sup> Street, S.W.  
Washington, DC 20024
11. Office of the Attorney General  
(Alan Bergstein)

ATTESTED BY:

**Sharon S. Schellin**  
Secretary to the Zoning Commission  
Office of Zoning