

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



**ZONING COMMISSION ORDER NO. 05-24B
Z.C. CASE NO. 05-24B
(Modification to Approved Planned Unit Development for
Eastgate Family Housing)
December 8, 2008**

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia (the "Commission") was held on June 2, 2008. At the meeting, the Commission approved an application from the District of Columbia Housing Authority and the associated private development team of A&R/THC II LLC (the "Applicant") for a modification to an approved Planned Unit Development ("PUD") for property bounded by Fitch, 51st, and F Streets, Benning Road, and Queen's Stroll Place (Drake Place), S.E. The property is identified as Lots 9-20 in Square 5318, Lots 20-36 in Square 5319, and Lots 29-36 in Square 5320. The Commission considered the application pursuant to Chapters 24 and 30 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

1. **The Application, Parties, and Hearing**

By Z.C. Order No. 05-24, dated April 20, 2006, the Commission approved a PUD for multiple properties in Squares 5318, 5319, and 5320. The PUD site is a rolling hillside of approximately 698,382 square feet of land area, or 16.03 acres located in the Marshall Heights neighborhood. The Order approved the construction of a large community redevelopment project that comprises a total of 186 new residences including: 20 detached houses; 158 row dwellings; and two grand houses (each having four units). The redevelopment plan also provided for closing and realigning several existing streets and alleys and creating new streets and alleys. The overall goal of the project is to create a stable mixed-income residential community with an emphasis on affordable housing. Forty-three percent of the units will be in the low-income range, 23% will be in the moderate-income range, and 34% will be at market rate. The PUD site is zoned R-5-A. No map amendment was associated with the PUD.

2. Pursuant to Z.C. Order No. 05-24A, the Commission approved a minor modification eliminating 35 garages and driveways and associated curb cuts along Queen's Stroll Place, S.E. and F Street, S.E. that the D.C. Department of Transportation ("DDOT") deemed too close together in accordance with DDOT standards. The Commission reduced the overall parking requirements for the PUD to a minimum of 277 onsite parking spaces in the PUD.
3. On February 15, 2008, the Applicant filed the instant application for a second minor modification to Z.C. Order No. 05-24 and requested that the application be placed on the Commission's consent calendar. The application stated that the requested modifications to Z. C. Order No. 05-24 are necessitated by current market conditions, specifically a depressed housing market as well as a crisis in the credit market rendering the higher priced detached houses in the project unmarketable. The Applicant proposes to modify the previously approved PUD by substituting 45 townhouses for the approved 20 detached houses.
4. On March 24, 2008, the Commission determined that the proposed modification was not minor in nature, and instead voted 5-0-0 to set the application down for a public hearing. The Commission also waived the requirement of a prehearing statement.
5. After proper notice, the Commission held a public hearing on June 2, 2008. The parties to the case were the Applicant and Advisory Neighborhood commission ("ANC") 7E, the ANC within which the PUD is located.
6. At the public hearing, the Applicant presented expert testimony indicating that, as a result of current market conditions including a depressed housing market and tight credit, the previously approved 20 detached houses included in the PUD are unmarketable and, as such, jeopardize the overall economics and feasibility of the PUD project. Further, the proposed 45 townhouses to be substituted for the 20 detached houses render the project feasible and enable the Applicant to provide 100% of the townhouses as affordable units.
7. The Applicant's expert traffic consultant testified that as a result of recent input from DDOT, the site plan for the proposed 45 townhouse units would be revised to eliminate garages and driveways for approximately eight of the townhouses. The Applicant therefore requested flexibility to modify the PUD to eliminate off-street parking for approximately eight of the proposed townhouse units to meet DDOT requirements.
8. There was no opposition to this modification request. ANC 7E submitted a letter dated May 31, 2008 in support of the requested modification indicating that on May 31, 2008, with a quorum present, the ANC voted 5-1 to support the modification. A representative of the ANC also testified in support of the modification of the public hearing.

9. The Office of Planning (“OP”) submitted a report dated May 21, 2008 that recommended approval of the modification, finding that the proposed townhouse units would be compatible with the overall development, provide additional affordable units, and retain all the public amenities proposed in the original PUD. OP further advised that the modifications would continue to meet the intent of the Comprehensive Plan and the elements of the approved PUD. OP’s recommendation of approval was contingent on the Applicant resolving any issues regarding driveway placement with DDOT. As indicated in ¶ 7, the Applicant met with DDOT and resolved DDOT’s issues.
10. At the close of the public hearing, the Commission voted 4-0-1 to approve the modification. The Commission concurs with OP and the Applicant that the proposed townhouses are compatible with the overall development and that the flexibility requested to eliminate off-street parking for approximately eight of the proposed townhouses is justified and would not adversely impact the ability of the PUD to meet the zoning standard of one space per unit for the PUD as a whole. Further, the proposed modification enables the Applicant to obtain the necessary financing to complete the PUD project.
11. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated May 30, 2008, found that the proposed PUD would not have an adverse effect on federal interests nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. Under the PUD process of the Zoning Regulations, the commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
2. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
3. Approval of this modification to the PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the development 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 Map of the District of Columbia.

4. The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to the affected ANC's written recommendation. The Commission has carefully considered ANC 7E's recommendation for approval and concurs in its recommendation.
5. 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 recommendation (as reflected in ¶ 9). The Commission has carefully considered OP's recommendation for approval and concurs in its recommendation.
5. The application for a PUD 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 of the District of Columbia orders **APPROVAL** of the modification to develop 45 townhouses in lieu of the 20 detached houses previously approved in the PUD. This approval is subject to the following guidelines, conditions, and standards:

1. The Applicant shall comply with the conditions set forth in Z.C. Order No. 05-24 and Z.C. Order No. 05-24A as modified herein.
2. The new townhouses that are substituted for the 20 detached homes in the previously approved PUD shall be developed in accordance with the Applicants supplemental filing submitted May 15, 2008 (Exhibit 14).
3. Condition 7 of Z.C. Order 05-24, is modified by adding a new Condition 7(e) to read as follows:
 - (e) Delete approximately eight (8) garages and driveways for the 45 townhouses to meet DDOT requirements and modify the fenestration of the aforementioned garages for adaptation to living spaces.
4. The PUD approved by the Commission, as modified herein, shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three (3) years of the effective date of this Order.

5. The Owner is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the 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 that 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. The failure or refusal of the Owner to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On June 2, 2008, the Commission **APPROVED** the application by a vote of 4-0-1 (Anthony J. Hood, Curtis L. Etherly, Michael G. Turnbull, and Peter G. May to approve; Gregory N. Jeffries, not present, not voting).

The Order was **ADOPTED** by the Zoning Commission on December 8, 2008, by a vote of 3-0-2 (Anthony J. Hood, Peter G. May, Michael G. Turnbull to adopt, Gregory N. Jeffries, not having participated, not voting; the third Mayoral appointee position vacant, 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 **JAN 2 2009**



ANTHONY J. HOOD
CHAIR
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



Z.C. CASE NO.: 05-24B

As Secretary to the Commission, I hereby certify that on JAN 14 2009 copies of this Z.C. Order No. 05-24B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. ~~D.C. Register~~ ^{SS}
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(Alan Bergstein)

ATTESTED BY:

A handwritten signature in cursive script, appearing to read "S. S. Schellin", is written over a horizontal line.

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