

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 05-36B
Z.C. Case No. 05-36B
K Street Developers, LLC
Modification of a Planned Unit Development at 200 K Street, N.E.
July 14, 2008

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on July 14, 2008. At the meeting, the Commission approved an application from K Street Developers, LLC (the "Applicant") for a modification to an approved planned unit development ("PUD") for property located at 200 K Street, N.E. (Lot 67 in Square 749). Because the modification was deemed minor, a public hearing on the request was not required. The Commission determined that this modification request was properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations.

FINDINGS OF FACT

On November 29, 2005, the Applicant filed an application requesting preliminary and consolidated approval of a PUD and a related map amendment to the C-3-C Zone District for all of Lot 67 in Square 749 (the "Subject Property"). In Z.C. Corrected Order No. 05-36 (effective October 13, 2006), the Commission granted consolidated approval for the portion of the project located on the eastern portion of the site ("Phase I") and preliminary approval for the portion of the project located on the western portion of the site ("Phase II"). Condition No. 8 of the Commission's order applied to both phases of the project and required, *inter alia*, the provision of an outdoor central plaza containing approximately 27,000 square feet of land area that would be available for passive recreational use by the public between the hours of 11:00 a.m. and 7:00 p.m.

On October 4, 2007, the Applicant filed an application for second-stage approval of Phase II. As currently designed, the proposed project will include an outdoor central plaza containing approximately 28,476 square feet of land area in both phases. Although the portion of the plaza located within Phase II will be open to the public between the hours of 11:00 a.m. and 7:00 p.m. each day, the Applicant now requests that the use of the elevated terrace located within Phase I be limited to the residents of Phase I. Because the windows of residential units are located at ground level along the perimeter of the elevated terrace, the Applicant claims that public access to that area would compromise the safety and privacy of the building's residents.

During the public hearing on the second-stage PUD application for Phase II on May 19, 2008, the Applicant requested that the Commission provide "flexibility" from Condition No. 8 of Z.C. Corrected Order No. 05-36. The Applicant's proposal to restrict public access to the elevated

terrace within the central plaza was discussed extensively during the proceedings on the second-stage PUD application for Phase II, and the Office of Planning (“OP”) concluded that the loss of public access to this portion of the plaza was more than offset by other project amenities.

However, because the Applicant seeks to limit public access to the portion of the central plaza located within Phase I and because the proceeding in Z.C. Case No. 05-36A applies only to Phase II, the Office of the Attorney General (“OAG”) concluded that the Applicant should file an application for a modification of Z.C. Corrected Order No. 05-36 as to Phase I.

The Applicant therefore requested the modification to Condition No. 8 in Z.C. Corrected Order No. 05-36 as described above. Although, the proposed modification would limit access to the portion of the central plaza located within Phase I to the residents of Phase I, the majority of the central plaza will remain open to the public. No other aspects of the proposed project will be changed, and the Applicant has stated that it will observe all other conditions of Z.C. Corrected Order No. 05-36. The modifications proposed by the Applicant are fully consistent with the central plaza conditions approved in Z.C. Case No. 05-36A.

There was no opposition to this minor modification request. Advisory Neighborhood Commission (“ANC”) 6C, the ANC in which the property is located, was served by the Applicant with a copy of the requested modification but did not submit a written report. The Commission did not request a written report from OP.

On July 14, 2008, at its regular monthly meeting, the Commission reviewed the modification request as a Consent Calendar matter and granted approval of the minor modification to Z.C. Corrected Order No. 05-36. The Commission concurs with the Applicant that the approval of the requested modification is appropriate and not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

CONCLUSIONS OF LAW

Upon consideration of the record in this case, the Commission finds that the proposed modification is minor and consistent with the intent of the previously approved PUD in Z.C. Corrected Order No. 05-36. Further, the Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purposes of the Zoning Regulations.

The approval of the modification is not inconsistent with the Comprehensive Plan. Further, the proposed modification does not impact the essential elements of the approved PUD, including use, height, gross floor area, lot occupancy, setbacks, or number of off-street parking spaces. The material facts relied upon by the Commission in approving the PUD have not changed, and the modification request is of such a minor nature that its consideration as a Consent Calendar item without a public hearing is appropriate.

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 to the approved PUD. Condition No. 8 of Z.C. Corrected Order No. 05-36 is hereby revised to read as follows:

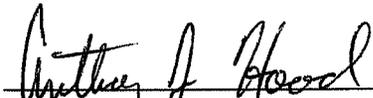
8. The Applicant shall provide a central plaza of approximately 27,000 square feet in size. ~~¶~~**With the exception of the proposed daycare center's outdoor play area, the portion of the** central plaza **located within the Preliminary PUD** shall be opened to the public for passive recreational use between the hours of 11:00 a.m. and 7:00 p.m. daily, and shall be posted with appropriate signage to inform plaza users about permissible and prohibited plaza activities. **This portion of** the plaza shall be accessible to the public through a 2nd Street entrance that shall remain open during the hours of public access and shall be closed to all except building residents, employees, and any other authorized personnel between the hours of 7:00 p.m. and 11:00 a.m. **Use of the portion of the central plaza located within the Consolidated PUD shall be limited to the residents of the Consolidated PUD.** In the second-stage PUD application, the Applicant shall provide data and drawings showing the design and placement of the 2nd Street entrance. The Applicant shall provide sufficient security personnel and procedures to ensure the safety of plaza users, including procedures defining the conditions requiring requests for Metropolitan Police Department assistance. Specific rules and operational details for the plaza shall be developed collectively by the Applicant, the condominium unit owner's association representing building residents in accordance with the provisions of D.C. Official Code § 42-1903.01 et seq., and Advisory Neighborhood Commission 6C.

Pursuant to the intent of 11 DCMR § 2409.3, no building permit shall be issued by the Department of Consumer and Regulatory Affairs ("DCRA") for the minor modification until the Applicant has recorded a "Notice of Modification" of Z.C. Corrected Order No. 05-36 in the land records of the District of Columbia. That Notice of Modification shall include true copies of Z.C. Corrected Order No. 05-36 and this Order (Z.C. Order No. 05-36B), which the Director of the Office of Zoning has certified. The recordation of the Notice of Modification shall bind the Applicant and any successors in title to construct on and use the site in accordance with this Order and any amendments thereof by the Zoning Commission.

This application was approved by the Zoning Commission at its public meeting on July 14, 2008, by a vote of 5-0-0 (Anthony J. Hood, Michael G. Turnbull, Gregory N. Jeffries, and Curtis Etherly, Jr. to approve; Peter G. May to approve by absentee ballot).

Z.C. ORDER NO. 05-36B
Z.C. CASE NO. 05-36B
PAGE 4

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 NOV 14 2008.

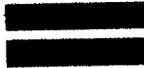


ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 05-36B

As Secretary to the Commission, I hereby certify that on NOV 19 2008 copies of this Z.C. Order No. 05-36B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. D.C. Register
2. Norman Glasgow, Esq.
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7. Office of Planning (Harriet Tregoning)
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ATTESTED BY:



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