

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



**ZONING COMMISSION ORDER NO. 05-36E**  
**Z.C. Case No. 05-36E**  
**K Street Developers, LLC**  
**(Modification to Approved Planned Unit Development - 250 K Street, N.E.)**  
**December 13, 2010**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the “Commission”) was held on November 29, 2010. At that meeting, the Zoning Commission considered an application from K Street Developers, LLC (the “Applicant”), for modification to a previously approved planned unit development (“PUD”) and related Zoning Map amendment in Lot 67 in Square 749, which is bounded by 2<sup>nd</sup>, 3<sup>rd</sup>, K, and L Streets, N.E. (the “Property”), pursuant to Chapter 24 and Chapter 30 of the District of Columbia Zoning Regulations (11 DCMR). Because the modification was deemed minor, a public hearing was not conducted.

The Commission determined that this modification request was properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations. The Commission deferred action until its December 13, 2010, public meeting, at which time the Commission voted unanimously to grant the application.

**FINDINGS OF FACT**

1. By Z.C. Order No. 05-36, effective October 10, 2006, the Commission granted first-stage PUD approval to permit the construction of a two-phase apartment development around an outdoor central plaza, with a total of approximately 702 dwelling units, including 78 units reserved for affordable housing, ground-floor retail, and daycare uses, with a total gross floor area of 850,000 square feet on a site measuring approximately 101,000 square feet. The two phases of the Applicant's overall project are being constructed as a single building for zoning purposes, with the second phase being constructed as an addition to the first phase.
2. At the same time that it granted first stage approval for the overall project, the Commission granted consolidated approval for the Applicant to move forward with the first phase of the total project. Construction of this first phase has now been timely completed and is in process of being leased and occupied.
3. By Z.C. Order No. 05-36A, effective November 14, 2008, the Commission granted second-stage approval for the project's second phase, consisting of 500 dwelling units (including 50 dedicated affordable housing units) and approximately 14,000 square feet of retail uses to be

constructed on the western portion of the Property. The resulting density of the overall project is 7.49 floor area ratio ("FAR"), and the approved height is 121 feet.

4. By Z.C. Order No. 05-36B, also with an effective date of November 14, 2008, the Commission approved minor modification to the first phase of the PUD, to restrict access, for safety purposes, to a small portion of the outdoor plaza to project residents only.
5. By Z.C. Order No. 05-36C, with an effective date of March 5, 2010, the Commission approved minor modification to the PUD to modify the affordable housing proffer slightly to allow prospective tenants to utilize more than 30% of household expenses for payment of rent in order to accommodate arts professionals.
6. By Z.C. Order No. 05-36D with an effective date of May 27, 2011, the Commission extended the validity of the second-stage PUD approval granted in Z.C. Order No. 05-36A, to November 14, 2012, within which time application must be made for a building permit, and with construction to commence not later than November 14, 2013. Z.C. Order 05-36D is being published concurrently with this Order, and, as explained in its footnote one, contemplates the phasing of the second phase as granted in this order.
7. By letter dated October 28, 2010, the Applicant requested minor modification to the second-stage PUD approval granted for the second phase of the project in Z.C Order No. 05-36A. In support of this request, the Applicant noted difficulty it is experiencing in moving forward with its development and financing plans for the PUD's second phase given the uncertain economic climate impacting development financing and the comparative scale of the second phase of the PUD (500 dwelling units in second phase as compared to 212 constructed units in first phase). As a result, the Applicant has developed a phasing plan for this second stage of the PUD to allow it to be developed in two smaller sub-phases (Phase II-A and Phase II-B) in efforts to allow the project to be more readily and favorably financed and constructed.
8. According to the Applicant's phasing plan, as provided in its October 28, 2010, letter, the overall design of the second phase of the PUD remains unchanged in terms of building envelope and appearance. Upon completion of Phases II-A and II-B, the second phase will contain 500 dwelling units and approximately 14,000 square feet of retail uses (including daycare). Fifty affordable housing units are still proposed. No change in building materials is proposed, nor is there any reduction in overall scope of the project. All the approved PUD amenities will remain unchanged. The Applicant proposes to first construct that portion of the second phase closest to the completed first phase. This Phase II-A is proposed to include 244 dwelling units (including 25 of the 50 affordable housing units). Phase II-B will follow upon completion of Phase II-A, and will include 256 dwelling units (and the remaining 25 affordable housing units).

9. As identified on Sheets A2.03A and A4.01 of the drawings submitted with its October 28, 2010 letter, the Applicant proposes to finish the north wall of Phase II-A with the same materials as utilized for the first phase of the PUD. This north wall ultimately will become an internal wall once Phase II-B is constructed. Similarly, plans for the interim landscaping for the second phase are shown on Sheets A4.01 and A4.02 of the drawings. Upon completion of construction of Phase II-B, the completed PUD, including the landscaped plaza area, will appear as approved by the Commission in Z.C. Case Nos. 05-36, 05-36A, and 05-36B, and all of the proposed project amenities and community benefits that the Commission approved will continue to be provided in the project.
10. In its October 28, 2010 letter, the Applicant also noted that, pursuant to the Commission's direction in Z.C. Order No. 05-36A, the Applicant has worked with the District of Columbia Office of Planning ("OP") and the District of Columbia Department of Transportation ("DDOT") to improve the public space transition from the first and second phases of the PUD along K Street, N.E. These refinements, reflected in Sheets L.1a through L.1d of the drawings, address the Commission's Finding of Fact 35f in Z.C. Order No. 05-36A that OP requested the Commission grant the Applicant flexibility to make improvements within the adjacent public space along K Street. The Applicant likewise notes the Commission's Finding of Fact 36, wherein DDOT requested the Commission grant the Applicant flexibility to work with DDOT on the final design of the landscaping and other streetscape improvements located in public space adjacent to the project.
11. In its October 28, 2010 letter, the Applicant also proposed to provide parking for the completed PUD at a ratio of 0.71 spaces per dwelling unit, as opposed to the earlier-approved one space per dwelling unit ratio. The Applicant submitted that its proposal, which was supported by OP, was a result of its market experience in general and in particular with the utilization of the parking area of the completed first phase. The Applicant also noted public policy considerations directing toward a reduced parking count and modal alternatives, especially for developments in close proximity to Metrorail, as is the case with the PUD.
12. The District of Columbia Office of Zoning referred this matter to OP for analysis and recommendation. By memorandum dated November 19, 2010, OP stated its support for approval of the modified project as a minor modification, with requests for further clarification regarding the Applicant's parking calculations and confirmation that the Applicant will attempt to market the day care center upon completion of construction of Phase II-A.
13. Responding to the OP report, the Applicant submitted a letter dated November 23, 2010, confirming that it intends to market the daycare center in Phase II-A upon completion of construction and clarifying that it is proposing a "total parking ratio" for the entire Phase I and Phase II PUD of 0.71 spaces per dwelling unit. When applied to the total PUD project

(Phases I and II), the anticipated parking to be provided by the Applicant is between 488 and 506 parking spaces, as follows:

- The Applicant plans to provide at least 506 parking spaces throughout the total PUD project, based upon the current configuration for the total project yielding 712 dwelling units (212 units in the completed Phase I; 244 units in Phase II-A; and 256 units in Phase II-B) (**712 units x 0.71 = 506 spaces**); and
  - However, should the Applicant determine to reduce the total unit count in Phase II by five percent, as allowed based upon flexibility granted in the approved PUD, the resulting dwelling unit count would then be 687 units (212 units in completed Phase I plus 475 units in Phase II), which would result in a minimum total parking requirement of 488 spaces (**687 units x 0.71 = 488 spaces**).
14. Advisory Neighborhood Commission (“ANC”) 6C submitted a letter to the Commission dated November 15, 2010, stating unanimous support for the modification and recommending that the Commission approve the requested modification.
  15. On November 29, 2010, at its regular public meeting, the Commission reviewed the modification request as a Consent Calendar matter and deferred consideration until its December 13, 2010, public meeting to allow the Applicant opportunity to submit additional information to support the Commission's approving the parking space reduction request as a consent calendar minor modification and for clarification from the ANC.
  16. In response to questions raised by the Commission at its November 29, 2010 public meeting, ANC 6C submitted a supplemental letter dated November 30, 2010, confirming that the ANC is aware and supportive of the Applicant's request to reduce the amount of off-street parking provided in the project to a ratio of .71 parking spaces per dwelling unit throughout the PUD.
  17. The Applicant submitted additional information responsive to the Commission's requests by letter dated December 7, 2010.
  18. The Commission concurs with the Applicant, ANC 6C, and OP that the approval of the 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 application, the Commission concludes that proposed modification is minor and is consistent with the intent of the approved PUD. Further, the Commission concludes that approval of the requested modification is in the best interest of the

District of Columbia and is consistent with the intent and purpose of the Zoning Regulations. Approval of the modification to the approved PUD also is not inconsistent with the District of Columbia Comprehensive Plan (10 DCMR). Further, the modification does not impact material elements of the PUD, including use, height, gross floor area, or project amenities or benefits.

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)), to give great weight to the issues and concerns of the affected ANC as expressed in its written report. ANC 6C recommended approval of the requested modification and the Commission concurs in its recommendation, and therefore gives OP the great weight to which it is entitled.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations (as discussed in paragraphs 12 and 13 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 provided herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the following modifications of an approved PUD for Lot 67, Square 749, at 250 K Street, N.E.:

1. The second phase of the PUD, approved in Z.C. Order Nos. 05-36A and 05-36B may be constructed pursuant to the phasing plan shown in the plans marked as part of Exhibit 2 of the official record of Z.C. Case No. 05-36E.
2. Parking shall be provided throughout the PUD at a ratio of 0.71 parking spaces per dwelling unit. Any references to amount of parking provided in any prior order shall be superseded by this Order.
3. Pursuant to Z.C. Order No. 05-36D, in order for approval for the second phase of the PUD to remain valid, a building permit application for Phase II-A must be filed not later than November 14, 2012, with construction of Phase II-A to commence not later than November 14, 2013. Further, in order for Phase II-B's approvals to remain valid, a building permit application for that phase must be filed not later than two years following the date of issuance of a final certificate of occupancy for the residential portion of Phase II-A, with construction of Phase II-B required to commence not later than one year thereafter.

Pursuant to § 2409.3 of the Zoning Regulations, the Applicant shall record a notice of modification of Z.C. Order No. 05-36 among the land records of the District of Columbia. After

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recordation of the notice of modification, the Applicant shall provide a copy of same for the records of the Office of Zoning.

On December 13, 2010, upon the motion of Commissioner May, as seconded by Commissioner Selfridge, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of 5-0-0 (Anthony J. Hood, Konrad W. Schlater, Peter G. May, Greg M. Selfridge, and Michael G. Turnbull to approve).

In accordance with the provisions of § 3028.8 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on May 27, 2011.



ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION



JAMISON L. WEINBAUM  
DIRECTOR  
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



Z.C. CASE NO.: 05-36D/05-36E

As Secretary to the Commission, I hereby certify that on MAY 25 2011 copies of these Z.C. Order Nos. 05-36D & 05-36E were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Norman Glasgow, Jr.  
Holland & Knight  
2099 Pennsylvania Ave., N.W.  
Suite 100  
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3. Karen Wirt, Chair  
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P.O. Box 77876  
Washington, D.C. 20013
4. Commissioner Ann Phelps  
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5. Gottlieb Simon  
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6. Councilmember Tommy Wells
7. DDOT (Karina Ricks)
8. Melinda Bolling, Acting General Counsel  
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1100 4<sup>th</sup> Street, S.W.  
Washington, D.C. 20024
9. Office of the Attorney General (Alan Bergstein)

ATTESTED BY:

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