

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 09-08A

Z.C. Case No. 09-08A

**Modification of Approved Planned Unit Development and PUD-
Related Map Amendment for Property Located in
Square 3831, Lot 47 (“Northern Parcel”)**

March 8, 2010

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public meeting on March 8, 2010. At the public meeting, the Commission approved an application from Brookland Artspace Lofts, LLC (the “Applicant”) requesting a clarification and a minor modification to an approved planned unit development (“PUD”) and related zoning map amendment for property located at 3305-3313 8th Street, N.E. (Square 3831, Lot 47) (“Northern Parcel”). The application was included on the Commission’s consent calendar pursuant to 11 DCMR § 3030.1. For the reasons stated below, the Commission hereby approves the clarification and minor modification.

FINDINGS OF FACT

1. The original PUD application, Z.C. Case No. 09-08, approved a consolidated PUD for the Northern Parcel. It simultaneously approved a first-stage approval for property located at 3225 8th Street, N.E. (Square 3832, Lot 803) and a one-block portion of Kearny Street immediately east of 8th Street (collectively, “Southern Parcel”). The Commission also approved a PUD-related map amendment for both the Northern and Southern Parcels. The PUD site is currently improved with Brookland Studios, located on the Northern Parcel, and Dance Place, located on the Southern Parcel. The PUD calls for redeveloping both sites. Brookland Studios will be razed and replaced with a building containing artist live-work units. Dance Place will be replaced with a dance studio. Advisory Neighborhood Commission (“ANC”) 5C was the only party in the PUD case.
2. On February 19, 2010, the Applicant filed an application requesting a clarification of one aspect of the consolidated PUD approval, and modification of Condition 11 of the PUD Order, which also pertains to the consolidated portion of the PUD.
3. The consolidated PUD was approved for 41 artist live-work units. The Applicant testified at the hearing that it intended to set aside the two ground-floor units for long-term use by Dance Place as offices or classrooms while its new facility is constructed, and once the new Dance Place facility is built, for artist and residential uses. Approval of

this set aside and use was inadvertently omitted from Zoning Commission Order No. 09-08, which approved the PUD.

4. The Applicant sought clarification that this set aside and use was to be permitted.
5. Second, Condition 11 of the Zoning Commission Order No. 09-08 provided that:

The Applicant shall reserve 50% of the residential units for households with an income no greater than 60% of AMI and the other 50% of the residential units for households with an income no greater than 50% of AMI.
6. The Applicant requests a modification to this condition to reduce the number of affordable units from 41 to 39, and to no longer require that any of the 39 remaining units be set aside for households making no greater than 50% of AMI. As a result, all of those units will be set aside for household of working artists earning between 51% and 60% of AMI.
7. The two market rate units would be those initially reserved for the use of Dance Place and would be located on the ground floor.
8. The Applicant's letter demonstrated to the Commission's satisfaction that the project would not be financially feasible if all 41 units were affordable and if any of the 39 affordable units were reserved for households earning less 51% of AMI.
9. On February 23, 2010, the Applicant filed a letter from the Department of Housing and Community Development supporting its assertion that the project would not be financially viable without increasing the affordability levels of half of the units.
10. The Office of Planning did not submit a report on the application.
11. ANC 5C did not take a formal position on the modification application.
12. At the March 8, 2010 public meeting the Commission voted to approve the clarification and the modification application as a minor modification.

CONCLUSIONS OF LAW

The Applicant seeks a clarification that two of the 41 units may be set aside for the use of Dance Place for its offices or classrooms or as residences. The Commission agrees with the Applicant that the failure of Zoning Commission Order No. 09-08A to specifically authorize this set aside and use was inadvertent. Accordingly, the Commission through this Order modifies Condition No. 11 to allow for the reservation of two ground floor units for Dance Place.

The Commission also approved the modification of that condition to allow the two reserved units to be sold or rented at market rate and to eliminate the requirements that half of the 39 remaining units be set aside for households making no greater the 50% of AMI. Based upon the evidence presented, the Commission concludes that the Applicant has demonstrated that the project will not be economically feasible with half of the units made affordable at such deep levels of affordability.

The Commission further concludes that the modification is minor in nature, and therefore required no hearing. Even with the modification, this project will be providing at least 12 times the amount of affordable housing that would otherwise be required for the Northern Parcel under a matter-of-right development. Further, the affordability limits are significantly lower than what would otherwise be required in the C-2-B Zone District. The Commission finds that the affordable housing package is still a significant component of the project and is a significant benefit and amenity in light of what would otherwise be required. The value of the project's benefits and amenities, as modified, still justifies the zoning relief requested.

The Commission concludes that the proposed modification 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 approval of the modification is not inconsistent with the Comprehensive Plan.

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 this application for clarification and modification of the approved PUD project in Zoning Commission Order No. 09-08. The approval of this application is granted so that Condition 11 of Zoning Commission Order No. 09-08 will read as follows:

11. The Northern Parcel shall consist of a residential building with 41 units. Two units on the ground floor may be market rate units and may also be made available to Dance Place for use as offices, classrooms, or residences by visiting artists. The remaining 39 units shall be artist live-work units reserved for households with an income no greater than 60% of AMI

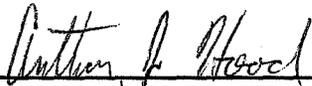
On March 8, 2010, on a motion made by Chairman Hood and seconded by Vice-Chairman Keating, this Order was **ADOPTED** by the Zoning Commission at its public meeting by a vote of 5-0-0 (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Michael G. Turnbull, and Peter G. May to adopt).

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In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on April 2, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



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As Secretary to the Commission, I hereby certify that on APR - 2 2010 copies of this Z.C. Order No.09-08A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|---|---|
| 1. <i>D.C. Register</i> | 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 |
| 2. Allison Prince, Director
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2001 K Street, N.W., Suite 110
Washington, D.C. 20006-1042 | 6. Councilmember Harry Thomas Jr. |
| 3. Anita Bonds, Chair
ANC 5C
P.O. Box 77761
Washington, DC 20013 | 7. DDOT (Karina Ricks) |
| 4. Commissioner Silas H. Grant, Jr.
ANC/SMD 5C09
2830 6 th Street, N.E.
Washington, DC 20017 | 8. Melinda Bolling, Acting General Counsel
DCRA
1100 4 th Street, S.W.
Washington, DC 20024 |
| | 9. Office of the Attorney General (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