

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 218

CASE NO. 76-21

May 11, 1978

Pursuant to notice, public hearings were held on April 18, May 26, July 21 and October 20, 1977 and March 16, 1978 to consider an application from Mortgage Trust of America, et. al., for modification of a planned unit development for property located south of Ward Circle between New Mexico and Massachusetts Avenues, N. W., Square 1601, Lot 2 (Assessment and Taxation Lots 813, 814 and 815).

FINDINGS OF FACT

1. This is an application for modification to an approved planned unit development under Section 7501 of the Zoning Regulations. The property contains a total of approximately 13.6 acres on Lot 2, Square 1601, located south of Ward Circle between New Mexico and Massachusetts Avenues, N. W. One phase of the planned unit development, containing 126 units known as the Foxhall East Condominium at 4200 Massachusetts Avenue, N. W. has been constructed and occupied. The applicants request modification essentially for Assessment and Taxation Lot 815, Square 1601 of the planned unit development as it would change the previous approval, as hereinafter more fully described.

2. The final approval by the Zoning Commission was originally given in Order No. 15 dated October 2, 1970. As pertinent here, the Zoning Commission approval, as it related more particularly to that portion of record Lot 2 known as Assessment and Taxation Lot 815, provided for two highrise apartment buildings and fifteen townhouses, sixteen percent lot occupancy and 1.2218 F.A.R. (both as applied to the entire Lot 2) resulting in a permitted gross floor area for Lot 815 of approximately 485,722 square feet, and a total of 374 units remaining for Lot 815. The height of the apartment building was set at a maximum of ninety feet and parking was to be provided at a ratio of not less than one per dwelling unit.

3. As originally filed, the present application sought modification and final approval pursuant to Paragraph 7501.39 of the Zoning Regulations for a ninety foot apartment building to be constructed in two phases with a total of 525 units for Lot 815. Parking was to be provided at a ratio of 1.1 per dwelling unit. This plan was the subject of public hearings held on April 18, May 26, July 21 and October 20, 1977.

4. At the hearing sessions, counsel for the various parties in opposition objected to the hearing of the case, on the grounds that the application was improper in that it should have been filed as a preliminary application, on the grounds that the previous PUD had expired, and on the grounds that pending court actions should be resolved before the Zoning Commission decided the matter. The Chairman ruled that the Commission would hear the case and reserve judgement on such objections until a record existed upon which such judgements could be based.

5. During the course of the hearings, there was substantial opposition to the application from the owners of the Foxhall East Condominium, Advisory Neighborhood Commission 3-D, the Spring Valley-Wesley Heights Citizens Association and others. Additionally, the Municipal Planning Office and Department of Transportation submitted reports and testimony in opposition to the modifications as filed. Both the Municipal Planning Office and Department of Transportation suggested that the applicants submit revised plans at a lower level of density.

6. The applicants' request for modification is primarily based upon their contention that the original approval calls for larger units and construction of a nature that is no longer economically feasible or marketable. The present owners of Lot 815 acquired title from the original developer, with rights and obligations under the planned unit development through a Consent Decree, in lieu of foreclosure, in the United States District Court for the District of Columbia.

7. Subsequent to the October 20, 1977 hearing the applicants restudied and revised their plans with regard to the requested modifications of the planned unit development. The new plan of development filed with the Zoning Commission on March 7, 1978 was developed by the applicants

in an effort to meet the objections of the opposing parties, as well as the comments and concerns of the Municipal Planning Office and Department of Transportation. The revised plans, identified as Exhibit 41 in the record of these proceedings, were the subject of public hearing on March 16, 1978. Those plans call for a single, 350-unit apartment building and 100 townhouses on Lot 815 in place of the previously approved two ninety foot apartment buildings and fifteen townhouses. This represents a reduction in seventy-five units from the originally requested modifications but an increase of seventy-six units over the number of units approved in 1970. Rather than, as originally proposed, locating the apartment building on the portion of the property closest to New Mexico Avenue with higher elevation, the proposed revision calls for the apartment building to be located in the "dog-leg" portion of the tract closest to Massachusetts Avenue with a lower elevation. This permits the apartment building to have a height lower than either originally approved by the Zoning Commission or as proposed originally in the requested modifications when measured from the customary point. On the higher site elevation, the 100 townhouses would be constructed and occupied as single family residences. A parking ratio of 1.1 for the apartment units would be provided and a parking ratio of 1.25 would be provided for the townhouses.

8. While the original Order called for a ninety foot setback from all property lines for the apartment building, the apartment building as proposed, will be a far greater distance away from the Foxhall East Condominium building (4200 Massachusetts Avenue, N. W.) and New Mexico Avenue but will be closer than ninety feet to property lines of the site. The building will still meet the 1910 Height Act provisions by virtue of a different selection of point of measurement. The proposed apartment building is farther away from the property lines in the "dog-leg" area than the previously approved townhouses would have been.

9. The F. A. R. of the revised modification plan would be approximately 1.154 or 446,000 square feet of development for Lot 815 with a lot occupancy of 19.1 percent. While the lot occupancy will be increased slightly from that previously approved, the gross floor area will be substantially reduced.

10. Access to the project will be from both Massachusetts Avenue and New Mexico Avenue, as shown on the site plan submitted as Exhibit 41. The access to Massachusetts Avenue will be by easement as has been agreed upon by the applicant and the Foxhall East Condominium subject to conditions herein and such access will be restricted for use of Lot 815 alone.

The administration building accessory to the Foxhall East Condominium will be reconstructed at applicants' expense so as to permit the accessway to Massachusetts Avenue and such reconstruction is approved as part of this Order.

11. Applicants also proposed as part of the site plan to convey to Foxhall East Condominium sufficient land so as to eliminate any claimed encroachments by Foxhall East.

12. The Zoning Commission finds, on the basis of evidence and testimony of record, that the revised plan of development under the conditions hereinafter set forth is compatible with the surrounding development and in harmony with the intent and purpose of the Zoning Map and Regulations. The estimated number of bedrooms of the project is approximately 670, which is approximately the estimated number of bedrooms under the previous approval. The gross floor area, on the other hand, is substantially less by approximately 40,000 square feet than the originally approved gross floor area for this lot. By virtue of the location of the apartment building in the "dog-leg" area and the townhouses on the higher elevation area, there will be greater visual compatibility with surrounding development than the original approval sought. Careful landscape treatment will be provided to satisfy the reasonable requirements of Foxhall East concerning security and visual impact, to be approved by the Board of Zoning Adjustment in further processing as required by Sub-section 7501.4 of the Zoning Regulations.

13. The proposal calls for a utility layout that should not have adverse affects on the area. Storm drainage, sanitary sewer and water services are available to the site. The detailed grading and landscaping plans and specific locations of storm water run-off lines and treatment will be subject to coordination with the Department of Environmental Services, the National Park Service and adjoining owners prior to further processing proceedings before the Board of Zoning Adjustment.

14. The Department of Transportation has indicated that the reduction in the number of units from the initial request assists in making the project manageable provided the applicants coordinate their development with DOT in an effort to encourage increased use of public transportation by the residents of the project.

15. The Municipal Planning Office, upon review of the proposed plans, recommends that this application as amended be conditionally approved with the conditions recommended that are implemented in this Order.

16. The site plan calls for access both to Massachusetts Avenue and New Mexico Avenue. The access to Massachusetts Avenue, as requested by the Department of Transportation, will be right-turn-only during peak rush hours, morning and evening. The traffic generation is not expected to be greater than the plan previously approved by the Zoning Commission and, with the controls required and encouragement of public transportation, should have less impact on the traffic flows. Parking for the project will be adequate on a 1.1 to one ratio for the apartments and a ratio of 1.25 spaces per unit for the townhouses.

17. Advisory Neighborhood Commission 3-D has filed a resolution dated March 9, 1978, unanimously consenting to the plan of development as revised subject to the following conditions:

- (1) That there be legal access for all vehicles to Massachusetts Avenue, subject to the express consent of Foxhall East and subject to any conditions they impose;
- (2) That the developer require all apartment tenants, regardless of whether or not they own a vehicle, to lease a parking space, plus no fewer than 15 additional parking spaces on-grounds for guests and a minimum unit-parking space ratio of 1.1;
- (3) That each townhouse be assigned its own individual parking space with an additional 25 percent spaces for guest parking;
- (4) That the applicant install in the private roadways throughout the development impediments adequate in number to deter traffic from using the private roadways in the development as a means of through access from New Mexico Avenue to Massachusetts Avenue and vice versa;
- (5) That the applicant construct a sign at the New Mexico Avenue and the Massachusetts Avenue entrances to the private roadways through the subject development (consonant in design with the style of the neighborhood) giving notice that the property and roadway are privately owned and that the roadway and property are opened only to home owners, residents and guests and invitees;
- (6) That the proposed townhouses be single family dwellings and not apartments as defined in the D. C. Zoning Regulations.

18. As to the issues and concerns of the ANC, the Commission finds that conditions of this Order will implement all of the conditions requested by the Advisory Neighborhood Commission.

19. The Spring Valley-Wesley Heights Citizens Association indicated that it interposed no objection to the revised site plan provided the conditions set forth in the ANC resolution are complied with as part of the Article 75 approval.

20. Foxhall East, Inc. and Foxhall Community Services Co., Inc. by letter dated April 6, 1978, withdrew their objections to the grant of this modification, subject to the conditions set forth in its letter, which will be deemed incorporated in this Order. The agreements reached between Foxhall East, Inc. and Foxhall Community Services Co., Inc. and applicants are contingent upon the acquisition of the property by Gerard M. Lavy Corporation and Donohoe Construction Company, as trustees.

21. The Executive Board of the Parent-Teachers Association at Horace Mann School submitted a letter supporting the new site plan proposal subject to conditions which are substantially incorporated in this Order.

22. Subject to the conditions proposed and requested by various parties previously in opposition, there is no objection to approval of the modifications as shown on the site plans submitted and marked as Exhibit 41 in the record.

23. The application was referred to the National Capital Planning Commission under the terms of the District of Columbia Self-Government and Governmental Reorganization Act and the National Capital Planning Commission reported that the application would not have a negative impact on the Federal establishment or other Federal interests in the National Capital and is not inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The modifications sought are in harmony with the intent and purpose of the Zoning Map and Regulations.

2. The approval of this application as a final application is appropriate because it is generally consistent with the present character of the area and because it would encourage stability of area and land values therein.

3. Development of the remaining portion of the site in accordance with the modifications requested provides for a superior site plan compared to the original request.

4. Although there were serious questions raised as to the continuing viability of the planned unit development approved in 1970, as a matter of law, the Zoning Commission concludes that the instant application should be granted as modified due to the particular conditions here presented. The Zoning Commission has not ruled in this case nor does it deem it necessary to rule as to the continued viability of the 1970 Planned Unit Development approval.

5. The approval of this application is in harmony with the intent, purpose and integrity of the comprehensive zone of the District of Columbia as embodied in the Zoning Regulations and Maps.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission hereby orders approval pursuant to Paragraph 7501.39 of the Zoning Regulations of the modifications in the planned unit development for Lot 2, Square 1601, property located south of Ward Circle between Massachusetts Avenue, N. W. and New Mexico Avenue, N. W., subject to the following guidelines, conditions and standards:

1. That portion of the subject land known for purposes of assessment and taxation as Lot 815 shall be restricted to one apartment house, containing a maximum of 350 units, and a maximum of 100 single-family townhouses. Thus, the maximum number of units for Lot 815 shall be 450 units for a total for record Lot 2 of 576 units. The maximum floor area ratio shall be as requested in the table on the page D-1 Exhibit 41. The overall gross floor area measured in accordance with the Zoning Regulations and previous Orders of this Commission shall not exceed 446,000 square feet for Lot 815. The area below the first floor may be used for living space providing such space is included in the gross floor area as measured under the Zoning Regulations and does not increase the allowable units. The height of the apartment building shall not be more than 90 feet, plus mechanical penthouses, as measured from a point of measurement established on New Mexico Avenue in accordance with the 1910 Height Act. The townhouse shall be constructed generally as shown on the site

plan marked as drawing D-1 of Exhibit 41 submitted under letter of March 7, 1978 with locations of all buildings substantially as shown thereon, although changes in location and arrangement of the townhouses, open space and landscaping may be considered and approved by the Board of Zoning Adjustment in further processing, taking into account commitments made to adjoining land owners. There shall be a mixture of two-story and three-story townhouses, with a maximum height of 33 feet.

2. Setbacks for the apartment building shall be in accordance with the 1910 Height Act and shall be generally as shown on the site plan submitted as drawing D-1 Exhibit 41.
3. Parking for the site shall include a minimum of fifteen outdoor guest parking spaces for the apartment high rise and have a minimum ratio of 1.1 spaces per apartment dwelling unit and 1.25 per townhouse dwelling unit. The applicant shall require all apartment tenants, regardless of whether or not they own a vehicle, to lease a parking space. Each townhouse shall be assigned its own individual parking spaces, and there shall be an additional twenty-five per cent spaces for guest parking.
4. The apartment units would have an approximate average net area of 800 square feet and will be rental units with the possible future change to condominiums. Townhouses would contain an approximate average of 1,200 square feet of net floor area. A minimum of sixty per cent would be for sale and the remaining would be either for rent or for sale. The apartment building shall be a maximum of 10 stories from point of measurement as established in accordance with the 1910 Height Act.
5. Access to the property will be from Massachusetts Avenue and New Mexico Avenue, all in accordance with the site plan submitted as Exhibit 41. The access to Massachusetts Avenue shall be by way of a private driveway with right-turn-only onto and off of Massachusetts Avenue during peak rush hours. The Foxhall East administration building accessory to the Foxhall East Condominium shall be altered and reconstructed at the applicants' expense to

provide a caretaker apartment and other accessory uses, substantially as shown in drawings A-1 and A-2 of the Exhibit 41 submitted under letter of March 7, 1978.

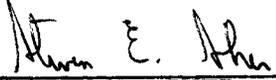
6. By separate agreement as may be required, the applicant shall convey to Foxhall East, Inc. or their designee sufficient land to eliminate any claimed encroachment by Foxhall East structures on Lot 815 and to provide for a narrow corridor between the properties for a fence or suitable plantings.
7. Fencing, berms and similar landscaping elements, as may be mutually agreed upon by the applicant and abutting property owners, shall be constructed and maintained along the ownership boundaries as may be approved by the Board of Zoning Adjustment. There shall be a fence along the property line adjacent to parkland owned by the National Park Service. Such fence shall be acceptable to the National Park Service and must furthermore be approved by the Board of Zoning Adjustment.
8. With regard to storm water, the applicants shall not tie in to the storm water system of Foxhall East, Inc. There shall be no storm drainage into parkland owned by the National Park Service, provided that in the alternative, the applicant may provide a collected storm drainage system which is acceptable to and has the approval of the National Park Service.
9. The applicant shall make an effort to preserve as many mature trees as can be reasonably retained on the site and plant more trees pursuant to agreement with Foxhall East.
10. The applicants shall cause to be placed at the entrances to the project at both Massachusetts Avenue and New Mexico Avenue signs indicating that the driveway is a private driveway for the use of the occupants, guests and business invitees only and shall maintain the said driveway as a private facility so restricted.
11. The applicants shall coordinate with the D. C. Department of Transportation with regard to

encouraging public transportation usage by the residents of the project and shall take reasonable steps to cause impediments in the driveways in an effort to deter through traffic.

12. The applicants shall submit a detailed landscape plan to the Board of Zoning Adjustment at the time of filing an application for further processing, which plan shall satisfy commitments made to adjoining owners. The applicants shall also submit a grading and drainage plan, indicating thereon the location of buildings, roads, through traffic impediments, sidewalks, water and sewer lines, inlets and basins, the location of proposed connection to water lines, sanitary and storm sewers and proposed erosion control measures shown on the site plan.
13. Approval of the application by the Zoning Commission and/or the Board of Zoning Adjustment shall not relieve the applicants of the responsibility of conforming to all other applicable codes and ordinances of the District of Columbia.
14. The applicants shall record an appropriate amendment to the covenant pursuant to Sub-section 7501.2.

Vote of the Commission taken at its public meeting held on April 13, 1978: 4-0 (George M. White, John G. Parsons, Walter B. Lewis and Theodore F. Mariani to approve with conditions, Ruby B. McZier not present, not voting).


WALTER B. LEWIS
Chairman


STEVEN E. SHER
Executive Director

This order was adopted by the Zoning Commission at its public meeting held on May 11, 1978 by a vote of 3-0 (George M. White, John G. Parsons and Walter B. Lewis to adopt; Ruby B. McZier, not voting not having participated in the case, Theodore F. Mariani, not present not voting).

In accordance with Section 2.61 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, this order is effective on 12 MAY 1978.

SEA.