Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 559
Case No. 87-28C
(Peabody Corporation PUD & Map Amendment)
January 11, 1988

Pursuant to notice, a public hearing for the Zoning Commission of the District of Columbia was held on November 30, 1987. At this hearing, the Zoning Commission considered an application from Malcolm E. Peabody and John C. Theoharis ("Applicants") for consolidated review and approval of a Planned Unit Development (PUD) and related map amendment pursuant to sections 2400 and 102 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of Chapter 30 of that Title.

FINDINGS OF FACT

1. The subject application which was filed on August 14, 1987, requested consolidated review and approval of a PUD for Lots 32, 37, 38, 39, 40, 41, 816, 817, 818, 819, 820, 883 and 884 in Square 516 and related change of zoning for the entire PUD site from HR/SP-2 to HR-C-2-C.

2. The applicants intend to construct a fourteen-story apartment building with ground floor retail. The building will be 125 feet and 6 inches in height and will contain 180,752 gross square feet at a total FAR of 8.8.

3. The PUD site comprises 20,641 square feet and is located at the northeastern corner of the intersection at 5th and I Streets, N.W. The site is currently vacant with the exception of a three-story vacant commercial building on part of the site.

4. The PUD site is located within the Downtown Urban Renewal Area which is designated for high density residential, governmental and institutional uses. In 1972 the PUD vicinity was rezoned from C-3-B to C-2-C, SP and R-5-D in order to bring the zoning map into conformance with Downtown Urban Renewal plan goals, to

increase the housing stock in the area east of Mount Vernon Square.

5. Surrounding the PUD site is a substantial amount of HR/C-2-C zoning. Three-quarters of the square in which the PUD site is located is in the HR/C-2-C zone district. There are three lots to the north which separate the subject site from the HR/C-2-C zone district. The total width of these three lots (822, 823, and 824) is approximately 46.6 feet. Also surrounding the site is the HR/SP-2, HR/C-3-C, C-4 and R-5-D zone districts.

6. The area surrounding the PUD site consists primarily of vacant lots and vacant buildings. There are a limited number of high density apartment buildings in the vicinity of the site. The Museum Square I, a low and moderate income development ten-story 300-unit apartment complex is located on K Street, N.W. between Fourth and Fifth Streets. The 133-unit Carmel Plaza apartment development, an eight-story structure which was recently completed, is located at Third and K Streets, N.W. Along Massachusetts Avenue, between Fourth and Fifth Streets, N.W., there are many vacant and boarded up three, four, and five-story apartment buildings. Two, and three-story townhouses are scattered along Fourth Street, N.W. and in the 400 block of K Street, N.W.

7. The project vicinity also contains several types of commercial uses including two and three-story body shops, tire companies and used car dealers along New York Avenue between Fourth and Seventh Streets, N.W.; the William Norwood Company Bookbinders and the Yale Steam Laundry are located in the 400 block of New York Avenue. The Chester A. Arthur Federal Office Building, a seven-story structure, is located at 425 I Street, N.W. to the east of the PUD site. Several ethnic restaurants and vacant parcels of land are located to the north of the PUD along the east side of Fifth Street, N.W.

8. The old Wax Maseum, which is planned for residential and retail development, is located on the northeast corner of Fifth and K Streets, N.W. The 500 block of K Street contains several vacant buildings, a paint shop and a towing company.

9. The SP-2 zone in which the property is located, is designed to act as a buffer between adjoining commercial and residential areas, and to preserve and protect areas adjacent to commercial districts which contain a mix of rowhouses, apartments, offices and institutions at medium to high deisnty. The SP-2 zone

district allows development as a matter-of-right up to a height of 90 feet and a floor area ratio (FAR) of 6.0 (3.5 of which may be used for non-residential purposes).

10. As a development incentive, the HR overlay in the SP-2 zone permits a maximum height of 130 feet (depending on the street width) and a maximum FAR of 8.5, provided that at least 2.0 FAR is devoted to hotel or residential use.

11. The HR/C-2-C zone district, the requested rezoning, is intended to serve residential and commercial functions. This district may be entirely residential or contain a mix of commercial and residential uses. The C-2-C zones are usually located in or near the central employment area.

12. The C-2-C zone district permits matter-of-right development to a height of 90 feet with a 6.0 FAR, 2.0 of which may be used for nonresidential purposes. The HR overlay permits a maximum FAR of 8.5 and a maximum height of 130 feet. The maximum height and FAR standards of the HR/C-2-C and the HR/SP-2 districts standards are identical except for retail uses. The HR/SP-2 zone permits retail uses as an accessory to an apartment building, but does not allow signage on the street nor allow access from the street level. The HR/C-2-C zone district permits retail uses as a matter-of-right.

13. The zoning pattern in the area of the PUD includes the HR/C-2-C to the north and east; HR/SP-2 to the south; and HR/C-3-C and R-5-D to the west.

14. Under the PUD Regulations, the Zoning Commission has authority to impose development conditions, guidelines and standards which may exceed or may be less than the matter-of-right standards identified above. The Zoning Commission may also approve uses that are permitted as a special exception by the Board of Zoning Adjustment (BZA) or approve development variances that are required by the project design.

15. The District of Columbia Generalized Land Use Element of the Comprehensive Plan for the National Capital designates the subject site for mixed-use high density residential and commercial development.

16. The applicants are the contract purchasers of the property. They have applied for assistance under the District of Columbia's Land Acquisition for Housing Development Opportunities Program("LAHDO"), which provides assistance to developers for the

rehabilitation or construction of housing. Under this program, the District of Columbia Government will directly acquire property and then lease the land back to the developer at a favorable rate. At any time within the next 10 years, the developer may opt to purchase the property back at cost. Under the LAHDO program, 20 percent or 42 of the 209 units must be set aside for low to moderate income housing.

17. The apartment building will be "U" shaped and will contain 14 stories with ground floor retail. The building will front on I Street and wrap around the corner to 5th Street, N.W. The building will be 125 feet and 6 inches in height and will contain 216,640 gross square feet at a total FAR of 8.8 or 180,752 gross square feet. It will have a total lot occupancy of 94 percent. The retail component of the project will be located on the ground level and will contain 13,800 to 14,800 square feet of space. The apartment units will be located on the 2nd through 4th floors, with parking located below grade. The project will contain a total of 209 apartment units of which 62 will be efficiencies, 33 one bedrooms, 36 one bedrooms widh den, and 78 two bedrooms. Twenty percent of these units will be rented to tenants whose incomes are less than 80 percent of the median income of families and individuals in the metropolitan area as required under the LAHDO program.

18. Access to the retail component of the project will be from 5th and I Streets, N.W. The entrance to the lobby will be located along the eastern section of the Eye Street frontage. The retail space will consist of neighborhood convenience-type facilities such as day cleaners, food services and other neighborhood and retail establishments.

19. There will be a courtyard in the center of the site for use by tenants and their guests, beginning at the second level of the project containing approximately 5,000 square feet of outdoor recreation space. There will be a sun deck on the roof of the building which will be available to all tenants of the building. The sun deck will be located along the eastern portion of the roof and will consist of approximately 2,500 square feet.

20. Access to the parking garage will be located on 5th Street. The garage will consist of one level below grade, and will contain 58 parking spaces, of which three (3) will be handicapped spaces. Four parking spaces will be located in the rear of the building along the alley.

21. On November 30, 1987, the applicant submitted a revised application since the filing of August 14, 1987, and requested that the Commission approve the following changes from the original submission:

    a. An increase in FAR from 8.7 to 8.8;

    b. A reduction in parking spaces from 144 to 62. The applicant indicated that that 144 spaces, or two levels of below grade parking, would be economically prohibitive due to the high water table in the area and the extensive sheathing, shoring and underpinning that would be necessary. The traditional level of parking would cost approximately $15,500 per space, more than double the cost for the first level of parking.

    c. An additional reduction in the required recreational space from 9,043 square feet in the original application to 7,182 square feet (7,500 square feet including covered area). The applicant testified that the 24,141 square feet recreational requirement of the C-2-C zone would seriously affect their ability to finance the project and would also result in a significant reduction in the size of the apartment units. The project would contain full-size apartments with amenities within the apartments, such as individual laundries and balconies which overlook the courtyard. While the balconies do not count toward the recreational requirements they would serve a recreational purpose for individual tenants, who would prefer to have their own private recreation over additional community space.

    d. A reduction in the retail space from 15,670 square feet to 13,800-14,800 square feet due to refinements in the project and recalculation of gross floor area.

    e. The addition of one 10' x 20' service delivery space to the loading area of the project, as required by the Regulations, in response to the recommendation of the Department of Public Works, as noted in Finding number 37. In the original application, the applicants requested that the service delivery space be eliminated due to the project's physical constraints.

22. In addition, the applicant requested relief from the following Sections of the Regulations:

a. Section 2101.1 of the Parking Regulations to provide five fewer parking spaces for the retail component of the project than is required. The applicant testified that the project meets the parking requirement for the residential component, which is 53 spaces, but that only 9 of the 14 spaces required for the retail use could be provided. He indicated that the retail space would be designed for walk-in businesses and hence should generate little or no parking demand; and

b. Section 2116.1 of the Regulations to provide 14 of the required parking spaces in the vault area below grade. The configuration of the site is such that the applicants need to use the vault space on the Eye Street side of the project to accommodate 14 of the 58 spaces they are providing below grade.

23. The applicant also requested flexibility to put offices on the first and second floors of the project some time in the future, if the retail space does not rent or the apartment units are slow to rent and there is a demand for office space in this area.

24. An option agreement with Bush Construction, the co-owners and managers of Carmel Plaza at 200 K Street, N.W., and the applicant has been reached to lease up to 25 spaces in Carmel Plaza to compensate for the reduction in parking. Carmel Plaza is a residential building located within two blocks of the proposed PUD site, that has 248 parking spaces, more than six times the amount that is needed for the 133-unit building. Bush Construction is also the applicants' contractor for the PUD project.

25. The applicant contends that the proposed development would provide the following benefits:

a. 209 apartment units in an area of the City which has been designated for housing;

b. critical neighborhood retail businesses to service the tenants of the PUD and the residents of the surrounding neighborhood;

c. enhancement of an area in the City which is currently under-utilized and dominated primarily by surface parking lots, auto repair shops and other unattractive uses;

d. entry level job opportunities and anticipated tax revenues to the City's economy and other general benefits to the City and to the health, welfare and prosperity of its citizens;

e. a new apartment/retail project for the northeast corner of 5th and I Street, N.W., which is well conceived and an attractively designed building, which is appropriate in height and density given the site's location on a corner overlooking Massachusetts Avenue. The project will have no adverse impact on the natural environment or transportation policies and systems of the City.

26. The applicant testified that his firm will enter into a First Source agreement with the District of Columbia Department of Employment Services.

27. The Applicants' architect testified that the proposed PUD project was designed to have an elegant and distingushed presence and that the building design is intended to set the standard for other redevelopment with a positive new image for the area. Further, the building is appropriately designed for its location fronting on a major and important thoroughfare such as Massachusetts Avenue. The final building materials for the project have not been selected, it is anticipated that the building will be constructed of pre-cast concrete or similar pre-formed material and will be of natural masonry color. The building's rear facade will consist of balconies, which will overlook the courtyard.

28. The Commission accepted, and concurred with, the conclusions reach in the traffic report, filed at the hearing, that the amount of traffic generated by the proposed PUD would have a minimal impact on the surrounding street network.

29. The applicant requested flexibility in design of the proposal of which includes but is not limited to the parking layout in the parking plan.

30. The District of Columbia Office of Planning ("OP"), by memorandum dated November 20, 1987 and through the testimony at the public hearing, recommended approval of the application.

31. OP testified that the proposed housing project is greatly needed in the City in general and, more

importantly, in the northern edge of downtown. OP further testified that the project is particularly responsive to the goals and objectives of the Housing, Economic Development and the Downtown Elements of the Comprehensive Plan and that the project may be a forerunner for other housing projects in the area. The availability of moderate income housing made possible in this PUD is a very attractive feature of the project.

32. The Office of Planning further testified that the rezoning to HR/C-2-C is needed to provide retail uses on the first floor, which would cater to needs of the residents of the project and the surrounding area and strengthen the viability of the residential use.

33. OP stated that the Applicants are providing large size apartments which would satisfy needs of the residents and, therefore the reduction in the amount of required common recreational space for the project is acceptable.

34. The District of Columbia Department of Public Works ("DPW"), by memorandum dated November 20, 1987, and at the public hearing, addressed the transportation impact of the proposed project.

35. DPW concluded that the volume of traffic would have no adverse effect on the adjacent street system. The ground floor retail uses will be of a local nature and will serve residents of the project and other patrons in the immediate area. Therefore, the retail use is not expected to attract vehicular trips to the site.

36. DPW did not have time to examine the impact of the applicants' reduction in parking spaces, from the 144 parking spaces to 62, but it believes that 62 provided spaces would adequately serve the project.

37. In addition to the 12 x 55 and 12 x 30 loading berths, DPW recommended that the applicant be required to provide a service delivery area.

38. The District of Columbia Department of Housing and Community Development ("DHCD"), by letter dated November 25, 1987, expressed its support for the PUD and requested expeditious approval of the application. DHCD envisions that the PUD project will offer substantial benefits to the community and District residents.

39. Advisory Neighborhood Commission ("ANC") 2C, by letter dated November 19, 1987, recommended that the Zoning Commission approve the project and Zoning Map

Amendment. The ANC indicated that its support for the project is based on the following:

a. the project will provide critically needed housing in the downtown area;

b. the project will create employment opportunities or workers at many levels;

c. the project will result in additional property tax revenue for the City; and

d. the project will create additional revenues, such as sales and income taxes.

40. The District of Columbia Fire Department, by memorandum dated October 22, 1987, stated that it has no objection to the development of this project, provided that a complete automatic sprinkler system is provided throughout the entire structure, including the residential units and the garage, and that it be designed and installed per MFPA Standard No. 13, 1987 Edition.

41. In response to the Commission's inquiry about the installation of an automatic sprinkler system throughout the structure, the applicant testified that the building would be subject to the 1981 edition of the Building Officials & Code Administrators Basic Building Code ("BOCA"), which requires a sprinkler system only in the corridors of the building. The applicant stated that this issue with the Fire Department would be discussed when making application for a building permit.

42. There were no letters included in the record of the case from persons in opposition nor testimony at the hearing from persons in opposition to the application.

43. The Commission finds that the proposed PUD project will be an asset to the District and will provide vital housing in an area where it is very much needed. The retail component will also provide necessary retail services in a community where such services are severely lacking. The Commission finds that the PUD project is in conformance with the Comprehensive Plan, which designates the site for mixed-ues, high density residential and commercial houses.

44. The Commission further finds that the requested rezoning to HR/C-2-C will enable the Applicants to provide the type of retail uses that will benefit the community as well as the tenants. The Commission believes that the retail component can be approved with

the limitation that no fast food establishments be permitted in the project.

45. The Commission finds that the increased FAR requested by the applicant will help to ensure the development of the site for housing. The Commission has the authority to increase the FAR in exchange for the provision of certain amenities. The Commission finds that the necessity to provide housing, expecially moderate income housing in the downtown area, where the shortage is acute, is sufficient to approve the request for the additional density. The Commission further believes that the 125'6" height of the height of the proposed project is in conformity with the existing structures in the neighborhood and is appropriate for the sites.

46. The Commission does not concur with the Applicants' request to put office use on the first and second floors of the project as an option, if the floors do not rent for the intended purposes. The Commission is concerned that office use will pose security problems for tenents of the building, and consequently, denies this request.

47. The Commission finds that the 62 on-site parking spaces proposed by the applicant, coupled with 25 additional off-site parking spaces, will be sufficient to serve the retail and residential components of the project. The Commission also approves the applicant's requested relief from 11 DCMR 2116.1 to provide 14 required spaces in the vault area below grade.

48. The Commission concurs with the position of the Department of Public Works regarding the adequacy of the proposed parking for the project. The Commission further agrees that the project will not have an adverse impact upon the traffic network in that area.

49. The Commission concurs with the Applicants that the required amount of common recreation space may be reduced and that the courtyard and the sun deck will be adequate to meet the tenants needs.

50. The Commission believes that the loading area of the project should be covered in order to enhance its aesthetic appearance, but shall not be included in the gross floor area of the project, in order to prevent an increase in the maximum FAR.

51. The Commission finds that the proposed sun deck on the roof of the project shall be landscaped with appropriate furniture and plants to enhance its appearance.

52. The Commission concurs with the Advisory Neighborhood Commission 2C that the proposed PUD project will provide needed residential housing and property tax revenue to the City, as well as sales and income tax revenues.

53. The proposed action of the Zoning Commission to approve the application with the conditions was referred to the Nationl Capital Planning Commission (NCPC), pursuant to the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by report dated January 11, 1988, indicated that the proposed action of the Zoning Commission would not adversely affect the federal establishment or other federal interests in the National Capital nor be inconsistent with the Comprehensive Plan of the National Capital.

CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate means of controlling the development of the subject site, because control of the use of the site is essential to assure compatibility with the neighborhood and achieve the goals and policies of the City.

2. The development of this PUD carries out the purposes of Article 75 to encourage the development of well-planned residential, institutional, commercial and mixed use developments, which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter of right development.

3. The development of this PUD is compatible with city-wide goals, plans and programs and is sensitive to environmental protection and energy conversation.

4. The approval of this application is not inconsistent with the Comprehensive Plan of the District of Columbia and the purposes of the Zoning Act.

5. The proposed application can be approved with conditions which ensure that the development will not have an adverse effect on the surrounding community, but will enhance the neighborhood and assure neighborhood stability.

6. The approval of this application will promote orderly development in conformity with the entirety of the District of Columbia Zone Plan as embodied in the text and map of the Zoning Regulations.

7. The Zoning Commission has accorded ANC 2C the "great weight" to which it is entitled.

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 this application for consolidated review of a Planned Unit Development, and change of zoning from HR/SP-2 to HR/C-2-C for Lots 32, 37, 38, 39, 40,41, 816, 817, 818, 819, 820, 883 and 884 in Square 516 located on the northeast corner of 5th and Eye Street, N.W. The approval of this PUD and change of zoning are subject to the following guidelines, conditions and standards:

1. The Planned Unit Development (PUD) shall be developed in accordance with the plans prepared by the architects, marked as Exhibits 6, 7 and 31 of the record, as modified by the guidelines, conditions and standards of the order.

2. Total floor area ratio (FAR) of the PUD shall not exceed 8.8, except that additional FAR will be permitted for a roof over the loading area.

3. The PUD project shall be developed as an apartment building with ground floor retail. The project shall contain 209 apartment units.

4. The total gross floor area of the project shall not exceed 180,752 square feet, of which 166,952 shall be devoted to residential use, and no more than 14,800 devoted to retail use.

5. The retail component of the project shall contain a minimum of 13,800 square feet and shall not exceed a maximum of 14,800 square feet.

6. The height shall not exceed 125 feet 6 inches.

7. The lot occupancy shall not exceed 94 percent, except that additional lot occupancy will be permitted for a roof over the loading area.

8. The project shall contain a minimum of 62 on-site parking spaces and a minimum of 25 off-site parking spaces.

9. The PUD shall contain a minimum of 7,182 square feet of recreational space which shall be located in the courtyard and on the roof of the building.

10. THe applicants shall have flexibility with respect to the following matters:

a. Varying the location and design of all interior components, including partitions, structural, slabs, doors, hallways, columns, stairways, location of elevators, electrical and mechanical rooms, provided that the variations do not change the exterior configuration of the building including the penthouse.

b. Making minor adjustments in the facade, window and balcony detailing, including the flexibility to shift the location of the doors to the retail uses on the ground floor and vary the type of paneling used on the retail frontage in order to accommodate the different types of retail uses.

c. Varying the location and type of exterior lighting fixtures;

d. Varying the species of plant materials;

e. Varying the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction;

f. Varying the arrangement of the parking spaces and modification to the below-grade space to provide the opportunity for storage and other space to serve the proposed users of the building, so long as such modification does not reduce below 62 the number of below-grade parking spaces to be provided; and

g. Varying the amount of retail space provided in the project not to exceed a maximum of 14,800 square feet or a minimum of 13,800 square feet.

11. The PUD project shall be developed in conjunction with the City's Land Acquisition for Housing Development Opportunities (LAHDO) Program. The LAHDO program is designed to facilitate the development of low and moderate income housing; in fact, the program requires that 20 percent of the apartment units in a new development be rented to moderate income persons at below market rates.

12. The corridors of the PUD project must be equipped with a complete automatic sprinkler system as recommended, in part, by the Fire Department.

13. The applicant shall have the option of selecting the species types of plantings on the roof, as well as the choice of roof furniture.

14. The applicant shall improve and landscape the project in accordance with DPW streetscape standards.

15. The applicant shall construct a roof over the loading area as originally proffered.

16. There shall be no fast food restaurants within the PUD project.

17. The applicants shall enter into a Memorandum of Understanding with the Minority Business Opportunity Commission which provides that the applicants will make a bona fide effort toward at least thirty-five (35) percent of the construction-related contracts for the project to Certified Minority Business Enterprises.

18. The applicants shall enter into a Memorandum of Understanding with ANC 2C which provides that the applicant will work with ANC 2C residents and minority contractors and subcontractors in conjunction with development of the project.

19. The change of zoning from HR/SP-2 to HR/C-2-C for lots 32, 37 thru 41, 816 thru 820, 883 and 884 in Square 516 shall be effective upon recordation of a convenant as required by 11 DCMR 2407.3.

20. No building permit shall be issued for the site until the applicant has recorded a covenant in the land records of the District of Columbia, between the owner and the District of Columbia, and satisfactory to the Office of the Corporation Counsel and the Zoning Regulation division of the Department of Consumer and Regulatory Affairs. The covenant shall bind the owner and all successors in title to construct on and use the property in accordance with this order, and amendments thereto, of the Zoning Commission.

21. The Zoning Secretariat shall not release the record of this case to the Zoning Regulation Division/DCRA until the applicant has filed a certified copy of the covenant with the records of the Zoning Commission.

22. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, application must be filed for building permit as specified in subsection 11 DCMR 2407.1. Construction shall start within three years of the effective date of this order.

Vote of the Zoning Commission taken at the public hearing on November 30, 1987, 3 to 0 (Patricia N. Mathews, Maybelle T. Bennett, and John G. Parsons to approve, George M. White and Lindsley Williams, not present, not voting.

This order was adopted by the Zoning Commission at its public meeting on January 11, 1988, by a vote of 3-0: (Patricia N. Mathews, John G. Parsons, Maybelle T. Bennett to approve, Lindsley Williams and George M. Whiite, not voting, not having heard the case.

In accordance with Title 11 DCMR Section 3028, this order is final and effective upon publication in the District of Columbia Register, specifically on 26 FEB 1988.

LINDSLEY WILLIAMS
Chairman
Zoning Commission

EDWARD L. CURRY
Executive Director
Zoning Secretariat

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