

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 584-A
Case No. 89-29M/87-37C
(PUD Modification @ Georgia Ave. Gateway)
March 12, 1990

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on December 7, 1989. At that hearing session, the Zoning Commission considered the application of the Festival Development Corporation to modify several conditions of approval in a previously approved Planned Unit Development, pursuant to Chapter 24 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 application, which was filed on August 29, 1989, requests a modification to a previously approved Planned Unit Development (PUD) and map amendment from R-1-B to C-2-A for Lot 17 (former Lots 8-13, 809-813 and 816; former parcels no. 91/159, 91/160, 91/169, 91/171, 91/172 and 91/173; and a closed public alley) in Square 2960 located at the northwest corner of the intersection of Georgia and Eastern Avenues, N.W.
2. By Z.C. Order No. 584 dated August 8, 1988, the Zoning Commission approved the above-mentioned PUD to allow for the construction of a mixed-use development, including office, retail and residential uses. The PUD site was to be developed with two buildings; the main building to a height of sixty-nine (69) feet and the smaller building to a height of sixty (60) feet. The PUD project was to have a maximum floor area ratio (FAR) of 2.95, a maximum lot occupancy of thirty-nine (39) percent for residential uses, 153-170 dwelling units, and parking to accommodate a minimum of 403 self-parked cars and 452 stacked-parked cars.
3. Pursuant to 11 DCMR 2407.9, the instant application seeks to modify the following eight (8) conditions of approval in Z.C. Case No. 584:

- a. (No. 1) Deleting the two-story gallery from the approved plans;
 - b. (No. 2) Reducing the number of residential units;
 - c. (No. 4) Reducing the height of the main building along Georgia Avenue;
 - d. (No. 6) Reducing the number of parking spaces to reflect the reduction in residential units;
 - e. (No. 29b & d) Changing the color of the window mullions;
 - f. (No. 31 & 35) Changing the requirement of obtaining simultaneous certificates of occupancy for the main building and the smaller building and assuring unobstructed vehicular access to the main building; and
 - g. (No. 34) Modifying the roof-top recreation space requirements to reflect the reduction in residential units.
5. The modification to Conditions No. 2 and 4 are in response to Bill 8-71, "Closing of a Public Alley in Square 2960, S.OI. 87-273, Act of 1989". The City Council action requires that the PUD be modified to reduce the maximum height of the main building from 69 feet to no more than 60 feet, and the number of residential units from a range of 152-170 to not more than 126 units.
 6. The R-1-B District permits matter-of-right development of single-family residential uses for detached dwellings with a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet, a maximum lot occupancy of forty percent, and a maximum height of three stories/forty feet.
 7. The C-2-A District permits matter-of-right low density development, including office, retail and all kinds of residential uses, to a maximum floor area ratio (FAR) of 2.5 with non-residential uses limited to 1.5 FAR, a maximum height of fifty feet, and a maximum lot occupancy of sixty percent for residential uses.
 8. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right

standards identified above for height, FAR, lot occupancy, parking, and loading, or for yards and courts. The Zoning Commission may also approve uses that are permitted as a special exception and would otherwise require approval by the Board of Zoning Adjustment (BZA).

9. On September 18, 1989, at a special meeting, the Zoning Commission determined that the 8 modifications requested had sufficient merit to be set down for public hearing. The public notice issued in the case only pertained to the 8 items listed for modification. No other matters pertaining to the previously approved PUD in Z.C. Order No. 584 were noticed for public hearing. The Commission is cognizant that an appeal is presently pending with the D.C. Court of Appeals with respect to certain aspects of Z.C. Order No. 584.
10. In response to prehearing motions by opponents, the Zoning Commission ruled that only testimony and evidence presented at the hearing pertaining to the eight (8) requested changes in the PUD conditions would be relevant in the Zoning Commission's decision and that the hearing was not the vehicle for reopening the record or reconsidering the merits of the original PUD decision.
11. The applicant described the Conditions of Z.C. order No. 584 to be modified. Condition No. 1 of Order No. 584 specifies that the project be developed in accordance with the approved plans. Condition No. 2 provides that the PUD be developed for mixed use, with retail, office and residential components. The project would have a maximum of 170 residential units with the flexibility to reduce the units by no more than 10 percent (to 153 units) to meet market needs. Condition No. 4 provides that the height of the main building shall not exceed sixty-nine (69) feet.
12. The applicant offered testimony on the request to modify Conditions 1, 2 and 4 is to meet the requirements imposed by the D.C. City Council to close the alley within the subject site. Consistent with the City Council action, the maximum height of the main building has been reduced to 60 feet and the number of residential units to 126 units.
13. The applicant noted that with this reduction in the number of units, the FAR has been reduced from a maximum of 2.72. Because of the significant reduction in the number of residential units (a 26 percent decrease) and the conversion of retail space to office space, the applicant was seeking to reduce the number of self-park parking spaces from 403 to 380 spaces.

14. The applicant testified that this represents a reduction of parking of less than 6 percent. The applicant noted that the total number of parking spaces achievable through stacked parking would be decreased from 452 to 424 spaces, also a reduction of 6 percent.
15. The two-story retail gallery has been deleted consistent with expressed community desires to focus on street-oriented, neighborhood serving uses. Retail space on the second level would be converted to office space. This change results in a lower number of required parking spaces for the project under Chapter 21 of the Zoning Regulations.
16. The applicant also indicated that Condition No. 34 of Z.C. Order No. 584 provides that the roof-top recreation space shall be as shown on the approved plans. No changes to the design for the roof-top recreation space is contemplated, although the space has been reduced as explained by the architect.
17. Condition No. 31 of Z.C. Order No. 584 provides that no certificate of occupancy shall be issued for any portion of the main building until a certificate of occupancy is issued for the smaller building in its entirety. Condition No. 35 provides that vehicular ingress and egress for the smaller building shall be clear and unobstructed before the main building is used for any purpose.
18. The record of the Zoning Commission in its decision in promulgating Conditions No. 31 and 35 of Z.C. Order No. 583 expressed a concern that if the small building was not substantially complete prior to the main building, vehicular access and egress problems to the site would be created. The Commission's intent was to ensure that during construction clear access was provided to the main building, that the entire site would have adequate access, and that the applicant have flexibility in design alternatives to address these concerns.
19. The architect testified that Condition No. 2 of Z. C. Order No. 584 provides that the number of residential units to be provided (170 units) may not be reduced by more than 10 percent or 153 units. Condition No. 4 allows the height of the main building along Georgia Avenue to be sixty-nine (69) feet. The architect testified that consistent with the City Council action in closing the alley, the maximum height of the main building has been reduced from 69 feet to 60 feet. The architect stated that the maximum number of residential units has been reduced to 126 units.

20. The Commission finds that because of the reduction in project size, a reduction in the number of parking spaces is also appropriate. Order No. 584 (Condition No. 6) states that 403 self-park parking spaces will be provided, with a total of 452 spaces available through stacked parking. The modified plan show 380 self-park spaces and 424 parking spaces available through a stacked parking scheme. This reduction in the number of parking spaces represents a decrease of approximately 6 percent compared to the 26 percent decrease in apartment units.
21. The architect requested the flexibility to reduce the parking spaces to not less than 380 spaces by (a) removing a portion of P3 under the main building or (b) removing the second level of parking under Building 2.
22. The architect discussed the present Condition No. 34 of Order No. 584 which specifies that the design of the roof-top residential recreational space be in accordance with approved plans. The architect noted that no changes to the design are proposed. The architect noted, however, that due to the substantial reduction in residential units (a 26 percent reduction), the amount of residential recreation space provided by the roof-top recreation area has been reduced. Yet, the architect noted, because the percentage reduction in residential recreation space is slight compared to the percentage reduction in the number of residential units, the amount of recreational space per unit available to the tenants has actually increased substantially.
23. The architect described Condition No. 29(b) and (d) which specifies paint colors for the window mullions of the project. The architect described the requested change of Condition 29(b) for the residential window mullions from blue to white to be more compatible with the houses in the residential neighborhood adjacent to the project. In conjunction, the architect noted the desire to change Condition No. 29(d) for the retail window mullions from blue-grey to Whittaker Coatings "Willard Green".
24. The architect described the vehicular access plan which allows the main building to be constructed prior to the smaller building, but ensures effective access to the site at all times. The phasing plan would involve the following:
 - a. Demolishing existing buildings within footprint of Gateway Building 1. Demolish west half of existing building within footprint of Gateway

Building 2 to provide temporary driveway for construction vehicles;

- b. Constructing Gateway Building 1;
 - c. Constructing east half of Gateway Building 2 up to 2nd floor to provide permanent driveway access to Gateway Building; and
 - d. Completing construction of Gateway Building 2.
25. The architect described the revised plans which address the workability of the two-way ramp for Building 2, an issue which was raised by DPW. The architect stated that the issue raised by DPW had been discovered by the architects in the process of preparing working drawings and had been revised. The revised drawings met the concerns of DPW and were submitted to the record as Exhibit No. 55.
26. The District of Columbia Office of Planning (OP), by memorandum dated November 28, 1989 and by testimony presented at the public hearing, recommended that the modifications be approved. OP testified that it reviewed the modification in the context of the previously approved PUD and did not readdress the original case. OP noted that they viewed the modification as a reduction in whatever adverse impacts the original PUD may have had.
27. The District of Columbia Department of Public Works (DPW), by memorandum dated November 27, 1989, noted that they have no objections to the PUD modifications. Their report did note that DPW had comments with respect to the plans in terms of the ramps to the Building 2 and related building permit issues. DPW also indicated that the residential self-park spaces could not be blocked through stacked parking. By memorandum dated December 7, 1989, DPW indicated that it had met with the applicant and that all of the issues raised in the earlier draft had been resolved.
28. The District of Columbia Department of Recreation, by memorandum dated October 31, 1989, expressed concerns about the provision of play areas for young children. The Department noted that the reduction in roof-top recreation space was satisfactory given the overall increase in the per unit square footage for the tenants.
29. The District of Columbia Metropolitan Police Department, by memorandum dated November 16, 1989, stated that it is not opposed to the project.

30. The District of Columbia Fire Department, by memorandum dated November 9, 1989, stated that is is not opposed to the project.
31. The District of Columbia Department of Housing and Community Development, by memorandum dated November 17, 1989, stated that is is not opposed to the project, as long as the Commission provides for a reasonable solution to the simultaneous Certificate of Occupancy issue related to site access.
32. Advisory Neighborhood Commission (ANC) 4A, by letter dated November 22, 1989 and by testimony at the hearing, requested that the modification be denied. The ANC's reasons for objecting include the project's height, residential density, traffic congestion, parking problems, inadequate recreational space and glut of offices in the area. The ANC also noted that the modification continues to violate the Comprehensive Plan.
33. ANC 4A stated at the public hearing that is opposed the modification just as it had opposed the original PUD and the alley closing. The ANC stated that the project was not compatible with the residential character of the neighborhood. The ANC also noted that the community was seeking to buy the subject property from the applicant. The ANC sought to develop a project compatible with the Comprehensive Plan and the community. The ANC's proposal was for a housing facility for senior citizens. The ANC stated that if the modification was approved, their efforts to purchase the property and redevelop it would be stymied.
34. Two persons testified at the public hearing in support of the application and indicated that the development would be an improvement to the existing blight.
35. Several letters in support of the application were received including, but not limited to, Promote Georgia Avenue, the N.W. Washington Neighbors, the Upper Georgia Avenue Planning Committee, and Plan Takoma. The major issue was a desire to provide for increased parking to accommodate 417 cars.
36. Shepherd Park Citizens Association and Shepherd Park Legal Defense Fund (Shepherd Park), parties to the proceeding, by testimony and by letter dated November 22, 1989, opposed the PUD modification. At the hearing, Shepherd Park presented a panel of 5 witnesses. Issues raised in opposition to the modification included the project's height, mass, design, traffic impacts, the residential character of

the Shepherd Park community, and the inconsistency of the project with the Comprehensive Plan.

37. By letter dated November 30, 1989, ANC 4B noted its opposition to the modification due to issues related to traffic, density, impact on residential neighborhoods, and impact of the switch from retail use to office use.
38. Several individuals testified at the public hearing in opposition to the application. Numerous form letters were received from individuals in opposition. The issues raised by the persons in opposition were previously raised by ANC 4A or Shepherd Park.
39. The City Councilmember representing Ward 4 spoke in opposition to the PUD modification. The Councilmember did not address the merits of the conditions requested to be modified, but modification to provide the community with leverage so that the Applicant would sell the property to the community. To help ensure that the property was sold, the Councilmember urged that the modification be denied.
40. The Shepherd Park Christian Church, by letter dated December 3, 1989, opposed the modification.
41. The Commission finds that the subject site should be developed as a PUD, and that the proposed modification will not adversely affect the neighboring property owners, the neighborhood, or the ANC. The Commission finds that the scope of issues raised by the ANC and others in opposition have previously been addressed by Order No. 584 previously addressed.
42. The Commission does not concur with ANC 4A and others in opposition that the modification should be denied as a means of providing leverage to the community to purchase the site and redevelop it. The Commission determines whether to approve PUD modifications on their individual merits. The Commission finds the report and testimony of the OP and that of the applicant and the applicant's architect are conclusive that the modifications are reasonable and within the scope of the Commission's prior approval and would be granted.
43. As to the concerns of the ANC and others regarding the Comprehensive Plan, the Commission finds that this issue has been adequately addressed in Order No. 584 and that the proposed modification raises no new issues with respect to the Comprehensive Plan.
44. As to the concerns of ANC 4A and others concerning the PUD's height, density and impact on the residential

character of the neighborhood, the Commission concurs with the OP and the Applicant that the proposed modifications do not raise any impacts which the Commission has not already addressed in Order No. 584.

45. As to the concerns about the number of parking spaces, the Commission finds that the reduction in spaces to 380 self-park spaces, coupled with the reduction in units and the conversion of retail space to office space, is adequate and exceeds the zoning requirement of 355 spaces.
46. As to the concerns of the Department of Recreation concerning play space for children, the Commission believes that the issue has been adequately addressed in Z.C. Order No. 584 and that the proposed modification has not changed these findings.
47. As to the concerns of the ANC, the parties and persons that were not previously addressed, the Commission finds that it has carefully considered all of those concerns and issues in its decision. The Commission finds that it has addressed or not concurred with those parties and/or persons for reasons related to inappropriateness because of the scope of the hearings, not being persuaded to take a particular action, or being outside the jurisdiction of the Zoning Commission to decide.
48. The proposed action of the Zoning Commission to modify Z.C. Order No. 584 was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated March 6, 1990, indicated that the modification would not adversely affect the Federal Establishment or other Federal Interests in the National Capital or be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The subject application is being processed as a modification to a previously approved PUD.
2. The Planned Unit Development process is an appropriate means of controlling development of the subject site, because control of the use and site plan is essential to ensure compatibility with the neighborhood. Approval of the modification is consistent with the Chapter 24 Coverant recorded in this case.
3. The development of this PUD carries out the purposes of Chapter 24 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.

4. The development of this PUD is compatible with city-wide goals, plans and programs, and is sensitive to environmental protection and energy conservation.
5. Approval of this modification is not inconsistent with the Comprehensive Plan for the National Capital.
6. The approval of this modification is consistent with the purposes of the Zoning Act, and Order No. 584.
7. The proposed modification can be approved with conditions which ensure that the development will not have an adverse affect on the surrounding community, but will enhance the neighborhood and ensure neighborhood stability.
8. The approval of this modification will promote orderly development in conformity with the entirety of the District of Columbia zone plan, as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Zoning Commission has accorded Advisory Neighborhood Commission 4A the "great weight" to which it is entitled.
10. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

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 a modification of Z.C. Order No. 584, subject to the following guidelines, conditions, and standards:

1. The Planned Unit Development (PUD) modifications approved herein shall be in accordance with the plans prepared by Leo A. Daly Associates, Architects, marked as Exhibits No. 36 and 55 of record, as modified by the guidelines, conditions and standard of this order.
2. The approved residential/office/retail mixed-use PUD project shall be developed with a reduction in the residential component from a range of 153-170 to a maximum of 126 apartment units.
3. The PUD project shall be developed with a reduction in the maximum floor area ratio (FAR) from 2.95 to 2.72.
4. The maximum height of the main building along Georgia

Avenue shall be reduced from sixty-nine (69) to sixty (60) feet.

5. The applicant shall provide a minimum of 380 parking spaces. The applicant may use stacked parking, but no cars shall be stacked in a manner which interferes with the residential self-parking spaces.
6. The applicant shall have the flexibility to provide the 380 parking spaces by: (a) removing a portion of P3 under the main building or (b) removing the second level of parking under the smaller building.
7. Condition No. 31 of Z.C. Order No. 584 shall be deleted.
8. Condition No. 35 of Z.C. Order No. 584 shall be modified as follows:

Vehicular ingress and egress movement for the smaller building shall be clear and unobstructed before the main building is used for any purpose, in accordance with the applicant's vehicular access plan as detailed in Exhibit No. 55 of the record in this case.
9. Conditions No. 29 (b) and (d) of Z.C. Order No. 584 are modified as follows and as shown in Exhibit No. 57:

| | |
|--------------------------------|---------------------------------------|
| b. Residential window mullions | White |
| d. Retail window mullions | Whittaker Coatings "Willard Green" |
10. Consistent with the architectural plans submitted in this application, the applicant shall delete the two-story gallery and convert the second story of the main building to office use.
11. No building permit shall be issued for the PUD 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, satisfactory to the Office of Corporation Counsel and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs (DCRA). The covenant shall bind the owner and all successors in title to construct on and use of the property in accordance with this order and amendments thereto of the Zoning Commission.
12. The Zoning Secretariat shall not release the record of

this case to the Zoning Regulations Divisions of DCRA until the applicant has filed a certified copy of said covenant with the records of the Zoning Commission.

13. This modification to 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 a building permit, as specified in 11 DCMR 2406.8. Construction shall start within three years of the effective date of this order.
14. Pursuant to D.C. Code Sec. 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25, (1987), and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Regulations Division/DCRA to approve permits, if the applicant fails to comply with any provisions of D.C. Law 2-38, as amended.

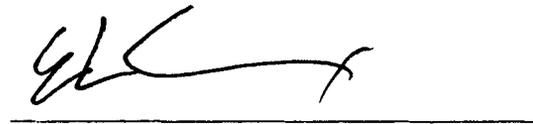
Vote of the Zoning Commission taken at the public meeting on January 8, 1990: 4-0 (John G. Parsons, Lloyd D. Smith and Maybelle Taylor Bennett to approve and William L. Ensign, to approve by absentee vote, and Tersh Boasberg, not voting, having recused himself).

The guidelines, conditions, and standards were approved at the public meeting on February 12, 1990.

This order was adopted by the Zoning Commission at the public meeting on March 12, 1990 by a vote of 4-0 (Maybelle Taylor Bennett, John G. Parsons, William L. Ensign and Lloyd D. Smith, to adopt as amended - Tersh Boasberg, not voting having recused himself).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the District of Columbia Register; that is, on MAR 23 1990.


TERSH BOASBERG
Chairman
Zoning Commission


EDWARD L. CURRY
Executive Director
Zoning Secretariat