Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 637-C
Case No. 93-1M/88-33C
(PUD Modification @ 1312 Massachusetts Avenue, N.W.)
December 13, 1993

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on September 20, 1993, to consider an application from 247 Associates Limited Partnership for a modification to a previously approved planned unit development (PUD), 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 11 DCMR 3022.

FINDINGS OF FACT

1. The application, which was filed on January 27, 1993, requested a modification to a previously approved planned unit development (PUD) on Lot 98 in Square 247.

2. The PUD site includes two parcels of land, designated as Parcel A and Parcel B in the original PUD application. Parcels A and B are separated by a public alley. Parcel A with premises address of 1312 Massachusetts Avenue, N.W. encompasses a land area of 19,072 square feet. Parcel B with premises address of 1301 L Street, N.W. encompasses a land area of 28,654 square feet. The entire PUD site, excluding the public alley which is to remain open, consists of a total land area of 47,726 square feet.

3. Parcel A of the PUD site is improved with a building containing eight stories and a basement known as 1312 Massachusetts Avenue. The building was formally used as office space for the U.S. Catholic Conference. It is presently vacant.

4. By Z.C. Order No. 637, dated October 16, 1989, the Zoning Commission approved a PUD for the two parcels of the subject site and a change of zoning for Parcel B from HR/SP-2 to C-4. The approved development was for two new buildings, which for the purpose of zoning would constitute a single mixed-use project.

5. A new residential structure, to contain 134 apartment units in ten stories, was approved for the Massachusetts Avenue site. That building was approved with a maximum floor area

ratio (FAR) of 6.42 and was required to have a minimum of 89 off-street parking spaces.

6. A 12-story office building, with the ground floor devoted to retail or community service uses, was approved for the site at 1301 L Street. This building was approved with a maximum FAR of 9.74 and was required to have a minimum of 189 off-street parking spaces.

7. Pursuant to 11 DCMR 2406.10 and by Z.C. Order No. 637-A dated August 5, 1991, the Zoning Commission extended the validity of Z.C. Order No. 637 for two years; that is until November 10, 1993 for filing for building permit, and for construction to start not later than November 10, 1994.

8. By Z.C. Order No. 637-B dated November 15, 1993, the Commission further extended the validity of Z.C. Order Nos. 637 and 637-A for one year; that is until November 10, 1994, for filing a building permit application and construction to start not later than November 10, 1995.

9. This one-year extension was granted to protect the applicant's interest in the original PUD until the modification request that is the subject of this order was decided and finalized.

10. The instant application proposes to modify the residential component of the PUD as originally approved in Z.C. Order No. 637. Instead of demolishing the eight-story office building on Massachusetts Avenue and constructing a new apartment building on the site, the applicant proposed to retain, renovate, and convert the building to apartment house use.

11. The floor area of the existing building would be increased by completing a full eighth floor, by covering the area at the rear of the building for a landscaped open terrace at the first floor and by filling in the semicircular court for balconies on each floor on the front of the building.

12. The office component, as proposed and approved for the 1301 L Street site of the PUD, will not be affected by this modification application.

13. The original PUD, pursuant to Z.C. Order No. 637, contains a series of guidelines, conditions and standards. The instant application proposes to modify certain conditions of approval relative to the residential component of the PUD, as follows:

    a. As approved, Condition No. 2 limited the floor area ratio of the entire PUD to a maximum of 8.41. As proposed, the office building would remain at

9.74 FAR and the apartment building would be 4.75 FAR, less than the 6.42 FAR maximum for its site.

b. As approved, Condition No. 3 established a maximum height for the residential building of 90 feet, exclusive of roof structures. As proposed, the height of the residential building would be 85.77 feet to the highest point of the roof and 89.80 feet to the top of the parapet.

c. As approved, Condition No. 4 limited the lot occupancy of the entire project to a maximum of 83 percent with the apartment house at a maximum of 71 percent. As proposed, the apartment house would have a lot occupancy of 51 percent.

d. As approved, Condition No. 6 required a minimum of 89 off-street parking spaces in the new residential building. As proposed, 33 parking spaces would be provided.

14. The applicant's architect indicated at the hearing that the modified proposal will comply with all of the applicable conditions of the original approval, with the exception of the requirement to build the apartment building in accordance with specific architectural plans and the minimum number of parking spaces.

15. The effect of the proposal before the Commission is to reduce the total FAR of the project from 8.41 to 7.75, a reduction of eight percent. The apartment house is reduced from 6.42 FAR to 4.75 FAR, a reduction of 26 percent. The number of units is reduced from 134 to 87, a reduction of 35 percent, and the parking spaces reduced from two spaces for every three units to more than one space for every three units.

16. A representative of the applicant testified at the public hearing that the modification is to reduce the costs associated with constructing the residential component of the project. Utilizing the existing super structure of the building reduces the cost of the demolition as well as reduces the construction costs for the apartment building. The severe real estate downturn, which has affected both the commercial and residential markets, has changed the economic parameters for the project. Where the project previously was feasible, the loss in commercial value makes it impossible to construct a residential component without a significant reduction in the costs associated with that part of the project.

17. The cost of renovating the existing building is approximately $7.5 million. With 87 units, the cost is approximately $86,000 per unit. The cost of constructing the new building, as originally proposed, is approximately $17 million or approximately $127,000 per unit. There is a greater likelihood that the smaller, less costly building can be financed. The risk that a lender incurs is minimized if the exposure under a loan is $7.5 million versus $17 million. The applicant has had preliminary discussions with a potential lender which has indicated interest in proceeding with the construction of the modified apartment building in the near future.

18. The applicant's real estate expert testified that in this location, construction of apartments does not yield a profit. There has been limited residential construction or renovation south of Massachusetts Avenue for several decades. Neither the modified apartment building nor the original apartment building is an economically successful venture, and both depend upon the economic success of the office building. Neither proposal is supported by construction of an office building at this time, because rents have fallen to the point where there is not sufficient value in the office building to make up the loss on the apartment building.

19. In the modification, the applicant has proposed to proceed with the construction of the overall PUD in two phases. The first phase, renovation of 1312 Massachusetts Avenue for apartments, would proceed on a faster track than is normally required under the PUD regulations. The applicant has committed to file for a building permit and start construction within one year of the approval of the modification.

20. The office building at 1301 L Street, N.W. would constitute the second phase. Application for a building permit to construct the office building would be required within five and one-half years after the issuance of this order of the Zoning Commission. Given the uncertainties of the timing of improvements in the office market, the completion of construction of the residential portion of the project is a significant factor in the overall project.

21. The applicant indicated at the public hearing that in the original approval of the PUD, the Zoning Commission found that a high density mixed use project on the two sites involved was not inconsistent with the Comprehensive Plan. The Comprehensive Plan as it is applicable to the site has not changed since approval of the PUD. The PUD, as proposed to be modified in the subject application, is not significantly different from the originally proposed and approved PUD.

The PUD, as proposed to be modified, is therefore not inconsistent with the Comprehensive Plan.

22. All of the amenities specified in the approval of the original PUD will be provided, except that what was to have been a new 134-unit apartment building on the 1312 Massachusetts Avenue site is now proposed to be a renovation of the superstructure of the existing building into an apartment building of 75 to 87 units.

23. The economic underpinning to the original PUD assumed a continuation in the increase in value of commercial office space, as a significant component to underwrite the residential building. Since 1989, commercial values have not increased. Rather, there has been a substantial and significant decline in commercial values across the board and this is specifically affecting the subject property. The applicant has a present investment in the site of approximately $41 million. This is the equivalent of $147 per square foot of commercial floor area since, in order to proceed with the modification, all the land costs are assigned to commercial space and none to the residential. The present value of commercial floor area in that vicinity is estimated to range between $50 and $75 per square foot, depending on the availability of tenants. The property is thus worth 50 to 70 percent less than the applicant's investment.

24. The applicant is unable to include additional amenities in the project without seriously jeopardizing the ability of the modification to go forward. The land costs associated with the residential portion of the project have been transferred to the office building site. The value of the office building site must essentially double to triple, without regard to inflation and future carrying costs, in order for the applicant to break even on the investment.

25. There is substantial value to the area in proceeding with the renovation of the existing building to put additional apartment units on line. The momentum created by the construction of new residential units will be significant. If the project goes forward and is successful, it would demonstrate that there is a viable residential market in the area. This market area has generated approximately 20 residential units annually in the past seven to eight years. The addition of approximately 80 units to the community in the near term constitutes a major contribution to the residential neighborhood.

26. The applicant's transportation consultant estimated that occupants of 26 to 32 percent of units in the area of the site own cars. With parking proposed to be provided at more than

one space for every three units (38 to 44 percent, depending upon the final number of units), more than adequate parking is available on the site to serve the residents of the building.

27. The applicant's transportation consultant determined that 84 percent of the cars parked on the street in the vicinity of the site were compact cars; i.e., they were 15 feet or less in length. The parking plan included for the subject building indicates that 73 percent of the spaces provided are of compact car size, consistent with the ownership pattern in the area.

28. Given the proposal to reuse the superstructure of the existing building, and the need to provide the landscaped terrace at the rear of the first floor, it is not possible to provide more parking spaces on-site or to provide a loading berth on-site. It is possible to reserve curb space on the service drive on Massachusetts Avenue in front of the building for a loading zone, which could accommodate all the foreseeable needs of the residents of the building.

29. The applicant requested flexibility, as follows:

    a. To respond to the market at the time of construction and sale, apartment units may be combined, divided or reconfigured. Two smaller units may be merged into one larger unit. The interior design of the building may be modified, so that the best layout of apartment units may be achieved. In no case, will the number of units be reduced to less than 75.

    b. The final selection of materials and color may vary, to take advantage of the availability of specific products.

30. Councilmember Jack Evans, the representative of Ward 2, by letter dated September 30, 1993, supported the proposed PUD modification. He noted that approval of the proposed modification will result in the immediate construction of 80 housing units in the Thomas Circle neighborhood, thus enhancing the neighborhood by increasing the number of persons living in the community.

31. The Office of Planning (OP), by memorandum dated June 18 and September 10, 1993, and by testimony at the public hearing, supported approval of the modification of the residential component of the application provided that the financial facts of the case adequately establish the necessity for the proposed modification, and provided that the applicant is prepared to complete the residential conversion within short

time limits provided for in the PUD order. The OP found that if the proposed PUD modification is approved, it would provide a solid block of housing on Massachusetts Avenue in Square 247 in support of providing housing in the Downtown area in general. OP noted that the proposed reduction in the housing component of the project is a reflection of the existing market conditions. OP also endorsed the applicant's proposed phasing of construction of the PUD.

32. The Department of Public Works (DPW), by memorandum to the OP dated July 1, 1993, raised questions with respect to the width of the adjoining public alley in terms of providing access to parking spaces, the lack of a loading berth on the site and the indefinite deferment of the construction of the office component of the PUD. DPW accordingly did not support the approval for modification of the previously approved PUD.

33. The Office of Business and Economic Development (OBED), by memorandum dated June 11, 1993, raised questions about the economic analysis and rationale for the proposed modification. By memorandum received by OP on September 20, 1993, OBED revised the statements in the previous report. The OBED's subsequent report agreed with the developer's contention that the original residential component of the PUD is not financeable, based on today's market. The OBED recommended approval of the modification with conditions (generally consistent with those recommended by OP) regarding timing of the construction of the commercial and residential portions of the project.

34. Advisory Neighborhood Commission (ANC) 2F, by reports dated January 6, 1993 and September 7, 1993, recommended approval of the proposed modification. The ANC was aware that the FAR devoted to residential use in the proposed modification is lower than originally proposed, but found that decrease acceptable in the context of the entire project.

35. The Logan Circle Community Association, by letter dated December 6, 1992, supported the application to modify the PUD. The Association noted that existing financing conditions presented the opportunity to proceed with the project at this time and that it supported expeditious action to allow commencement of construction on the apartment house.

36. The application was opposed by the Thomas House Residents Council. By written statement and by testimony at the hearing, the Council identified the following reasons why the application for modification should not be approved:

a. The proposed amendment is inconsistent with the Comprehensive Plan and the zone plan for the area because it results in a thirty-three percent reduction in the number of residential units along Massachusetts Avenue and reduces the residential emphasis on Massachusetts Avenue which the Comprehensive Plan specifies.

b. The proposed amendment results in an amenity package far below that which was originally provided. Allowing the construction of a residential building which exceeds current zoning requirements on the site by .25 FAR and which requires no special financial contribution by the developer seems to make a mockery of the amenity provisions of the Zoning Regulations.

c. The proposed extension of the commercial construction time limits is unwise public policy and a violation of the intent of the Zoning Regulations. The applicant did not present a sufficient justification as to why the normal time limit should not be met.

37. On October 18, 1993 at its regular monthly meeting, the Commission considered the applicant's response with regard to the issues raised by OP, DPW and the party in opposition. The Commission finds as follows:

a. The surveys of the applicant's transportation consultant indicate that the number and size of parking spaces proposed are adequate to meet the needs of the residents of the building.

b. The loading needs for the building can be accommodated in a loading zone located in the curb lane on the service driveway on Massachusetts Avenue, without adversely impacting traffic on the Avenue.

c. The plan submitted by the applicant at the public hearing provides sufficient clearance for cars using the parking spaces located off the 7.83-foot public alley to the east of the subject site.

d. The DD District is not applicable to the subject site and does not require any minimal FAR to be devoted to residential use.

e. The economic analysis presented by the applicant demonstrates that there is not sufficient value in the project to support the provision of additional amenities at this time. However, the Commission determined that conditioning the approval on the provision of amenities in the future, when the value of commercial office spaces improves would be a contentious issue.

f. The Commission was persuaded that under the present economic climate, the timely production of 75 to 87 apartment units is more likely to happen than the 134 units proferred in the original PUD approval.

g. The Zoning Regulations specifically allow the Commission to approve the phased construction of a PUD and to establish the appropriate timing for those phases. The Commission believes that the timing suggested by OP and the applicant are reasonable, given the present and foreseeable circumstances affecting the subject property.

38. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC), pursuant to the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated December 7, 1993, indicated that the proposed action of the Zoning Commission to approve the modification would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The PUD process is an appropriate means of controlling development of the subject site.

2. Approval of this PUD modification is not inconsistent with the Comprehensive Plan.

3. Approval of this PUD modification application is appropriate because the application is generally consistent with the present character of the area.

4. The approval of the application 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.

5. The proposed application can be approved with conditions which will ensure that development would not have an adverse effect on the surrounding area.

6. The Commission takes note of the position of the ANC 2F and in its decision has accorded to the ANC the "great weight" to which it is entitled.

DECISION

In consideration of the findings of fact and conclusions of law set forth herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the modification to the previously approved planned unit development on Lot 98 in Square 247, subject to the following guidelines, conditions and standards.

1. The residential component of the planned unit development (PUD), as modified, shall be developed in accordance with the plans prepared by David M. Schwartz, Architectural Services, P.C., marked Exhibit Nos. 7 and 62 of the record and as modified by the following guidelines, conditions and standards.

2. The modification shall be achieved by retaining, renovating and converting the superstructure of the existing office building for use as an apartment building.

3. The floor area ratio (FAR) for the residential component shall not exceed 4.75. The height shall not exceed 90 feet, and the number of dwelling units shall not be less than 75.

4. The apartment building shall provide a minimum of 33 off-street parking spaces. The applicant shall apply to the Department of Public Works for permission to estalish an on-street loading zone in front of the subject building.

5. No off-street loading berth shall be required for the apartment building.

6. The applicant shall be granted flexibility as follows:

   a. To respond to the market at the time of construction and sale, apartment units may be combined, divided or reconfigured. Two smaller units may be merged into one larger unit. The interior design of the building may be modified, so that the best layout of apartment units may be achieved.

b. The final selection of materials and color which may vary, to take advantage of availability of specific products shall be subject to the Commission's approval.

7. All other guidelines, conditions and standards set forth in Z.C. Order Nos. 637 and 637-A for the previously approved PUD shall apply except those specifically modified by this order.

8. The applicant shall file for and obtain a building permit to begin construction on the apartment building within 12 months of the effective date of this order. The applicant shall diligently pursue construction such that the building shall be "closed-in" (i.e., the roof, windows and exterior facade shall be substantially in place) within 12 months after the start of construction. The supervising construction architect shall certify to the Zoning Administrator the date on which the building has been "closed-in." The building shall be ready for occupancy not later than six months after "close-in".

9. The applicant shall file an application for a building permit to construct the office building within five and one-half years from the effective date of this order.

10. Pursuant to D.C. Code Section 1.2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25, (1987), and this order would be conditioned upon full compliance with those provisions. Nothing in the order shall be understood to require the Zoning Division of DCRA to approve permits if the applicant fails to comply with any provisions of D.C. Law 2-38, as amended.

Vote of the Commission taken at the public meeting on October 18, 1993: 4-0 (William B. Johnson, Maybelle Taylor Bennett, John G. Parsons to approve with conditions and William L. Ensign, to approve by proxy; Jerrily R. Kress, not voting not having participated).

This order was adopted by the Zoning Commission at its public meeting held on December 13, 1993, by a vote of 4-0: (William B. Johnson, John G. Parsons, William L. Ensign and Maybelle Taylor Bennett, to adopt - Jerrily R. Kress not voting, not having participated in the case).

In accordance with 11 DCMR 3028, this Order is final and effective upon publication in the D.C. Register; that is, on FEB 1 0 [illegible].

MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission

MADELIENE H. ROBINSON
Director
Office of Zoning

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