

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 704
Case No. 90-24C
(Consolidated PUD @ M Street Between
22nd & 23rd Streets, N.W. - Blackies)
October 21, 1991

Pursuant to notice, the Zoning Commission for the District of Columbia held public hearings on April 22, June 3, July 15, and August 1, 1991, to consider the application, as revised, of Ten Four Associates Limited Partnership. The application requested consolidated review and approval of a Planned Unit Development (PUD), pursuant to Chapter 24 of the District of Columbia Municipal Regulations ("DCMR"), Title 11, Zoning. The hearings were conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. The application filed on October 24, 1990, requested consolidated review and approval of a PUD for Lot 76 in Square 51 at 2200-2225 M Street, N.W. The site is zoned C-2-C.
2. The applicant proposes to construct a mixed-use project consisting of an office structure with ground floor retail and a separate residential structure. The two structures would be linked by a retail mall and an atrium.
3. The proposed structures would have a maximum height of 100 feet and an overall floor area ratio (FAR) of 7.5. (5.0 commercial FAR and 2.5 residential FAR). The project would also have a total gross floor area (FAR) of approximately 479,495 square feet. The residential component would contain approximately 196 residential units. The project would have a lot occupancy of 100 percent for office use and 80 percent for residential use, and provide 727 parking spaces with vault and valet parking spaces.
4. On February 11, 1991, at its regular monthly meeting, the Zoning Commission authorized a public hearing for Case No. 90-24C and also determined that it would consider additional floor area for residential uses that may exceed 2.5 FAR.
5. The C-2-C District permits matter-of-right high density development, including office, retail, housing, and mixed

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uses to a maximum height of ninety feet, a maximum floor area ratio (FAR) of 6.0 for residential and 2.0 for other permitted uses, and a maximum lot occupancy of eighty percent for residential uses.

6. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a first-stage PUD. The Commission may also 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 special exceptions and would otherwise require approval by the Board of Zoning Adjustment (BZA).
7. The site is located in the West End neighborhood of Ward 2. Boundaries of Square 51 are 22nd Street, N.W. to the east, 23rd Street, N.W. to the west, M Street, N.W. to the north and L Street, N.W. to the south. The property has a depth of 224.25 feet and a width of 274.42 feet. A 15-foot wide public alley abuts the site to the south.
8. At the public hearing on April 22, 1991, the applicant submitted a hearing notebook containing the testimony of its witnesses and a description of some modifications to the project that were made in response to recommendations from OP. The changes are as follows:
 - a. The commercial FAR was decreased from 5.0 to 4.73, and the residential FAR was increased from 2.5 to 2.85, resulting in 271,371 square feet of office, 19,748 square feet of retail and 175,324 square feet of residential, for a total gross floor area of 466,443 square feet;
 - b. The total FAR was increased from 7.5 to 7.58;
 - c. Retail was added at the ground level of the residential structure, increasing retail from 17,972 to 19,748 square feet;
 - d. Certain design changes were made in order to give the building a more residential-look including the addition of balconies and a continuous balustrade at the top floor of the building;
 - e. The fourth level of parking was deleted, thereby eliminating 181 parking spaces;

- f. The loading bays in the project were repositioned diagonally in order to facilitate delivery vehicle ingress and egress;
 - g. A 15-foot radius at the curb of 22nd and M Streets was added in order to create consistency with the curb across M Street;
 - h. The layby on 22nd Street was eliminated and replaced with a crescent-shaped drop-off at the office entrance; and
 - i. A contribution of \$1,000,000 to the Greater Southeast Community Hospital Foundation, Inc. was proffered to support the renovation of 106 residential units at the Southern Garden Apartment complex in Southeast Washington.
9. The District of Columbia Generalized Land Use Map of the Comprehensive Plan for the National Capital, as amended, identifies the West End Community as a mixed-use area where high density residential and medium density commercial development are to be located.
10. The applicant, through testimony presented at the public hearing, indicated that the goals for the project were to develop a first-class mixed-use building on the site. He further testified that the size of the office building was determined, in part, by the strong demand by tenants for large office buildings with approximately 300,000 square feet of space. Also, the applicant testified that the density of the proposed project was based on the height and density of existing projects in the neighborhood.
11. The applicant testified that the following benefits to the city justify the additional height and density requested:
- a. The primary amenity in the project is the provision of 196 apartments, which represent long-term, on-site housing units; it is not a hotel, which would be allowed as a matter-of-right;
 - b. The proposed projects generate significant property tax revenues to the city. It is expected that the project will produce approximately \$3,000,000 of additional tax revenues to the city annually. Further, \$850,000 in annual revenues will result from sales and use taxes. Approximately 409 jobs

will be created;

- c. The applicant will enter into a first source employment agreement with the District of Columbia Department of Employment Services to ensure that 51 percent of project jobs go to D.C. residents. The applicant will also enter into an agreement with the District of Columbia Minority Business Opportunity Commission to ensure that 35 percent of contracts go to minority business enterprises;
 - d. The applicant has entered into an agreement with the Greater Southeast Community Hospital Foundation, Inc. to provide \$1,000,000 toward the renovation of Southern Gardens Apartment Project in Southeast Washington, across from the hospital. The \$1,000,000 contribution will allow the day care center in the apartment complex to begin operating and will also aid in the completion of 106 apartment units, which have yet to be renovated.
12. The District of Columbia Office of Planning (OP), by memoranda dated April 16, and May 13, 1991, and by testimony presented at the public hearing, indicated that the changes made to the project by the applicant represented major improvements. However, in its summary abstract dated August 30, 1991, OP noted that they consistently informed the applicant that the projects amenity package was weak. In its final report to the Z.C., the Office of Planning stated that if the applicant's amenity package was substantially augmented and a compelling case was made at the public hearing, OP would support a 50-50 split of use.
13. The District of Columbia Department of Public Works (DPW), by memorandum dated April 13, 1991, and by testimony presented at the public hearing, indicated that it concurred with the applicant's proposal to reduce the number of parking spaces provided from 726 spaces in the original submission to 546 spaces which it believed would be adequate to serve the site. The report further stated that the results of the capacity analysis indicate that most of the critical intersections will operate at an acceptable level of service during both the A.M. and P.M. peak hours. However, the intersection of L Street, 22nd Street and New Hampshire Avenue is presently operating at a level of service F during the A.M. peak hour. Any additional traffic due to this PUD or any other service will result in more congestion; extended peak periods and long queues at this intersection.

14. DPW further indicated that the applicant's proposed Transportation Management Plan (TMP) would alleviate some of the transportation demands from the PUD project and therefore, it recommended that the TMP be implemented and made a condition of the approval of the project. DPW further indicated that the proposed loading facilities would adequately meet the requirements of the PUD project.
15. The District of Columbia Fire Department, by memorandum dated April 13, 1991, indicated that the proposed project does not appear to create any major or undue hardships on the daily operations of the Fire Department, and therefore, the Department expressed no objection to the application.
16. The District of Columbia Metropolitan Police Department, by correspondence dated March 28, 1991, indicated that it had no objection to the application, and recommended that the developer of the project take measures to properly secure the building, including an alarm system, identification system, security guards to patrol the site after hours, locks, and appropriate lighting.
17. The District of Columbia Department of Human Services, by memorandum dated March 27, 1991, indicated that it had no objection to the proposed PUD project. Further, the report indicated that the project would bring overall benefits to the city, including additional rental housing, revenue generation and employment opportunities. It further indicated that the project would aesthetically enhance the M Street corridor.
18. The District of Columbia Department of Employment Services, by memorandum dated March 7, 1991, indicated that it had no objection to the proposed project, but that the applicant should contact the Department in order to execute a First Source Employment Agreement committing the applicant to list all jobs created by the project with the Department, and to hire at least 51 percent D.C. residents for the new jobs created.
19. The District of Columbia Public Schools, Office of the Superintendent, by letter dated March 13, 1991, indicated no opposition to the proposed project.
20. The District of Columbia Department of Recreation and Parks, by memorandum dated April 13, 1991, indicated that the Zoning Commission should require the applicant to

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submit an adequately detailed recreation site plan for the roof, which would serve as an amenity in marketing the projects.

21. The District of Columbia Department of Housing and Community Development ("DHCD"), by memorandum dated April 10, 1991, indicated that it had no objection to the applicant's proposed PUD. DHCD indicated that the provision of 196 residential units would help stabilize and further the balance of uses in this area, which consist primarily of hotels, office and institutional facilities. DHCD indicated only one concern having to do with the archway connecting the residential and office structures. It indicated that lowering the archway would help to reduce the scale and mass of the building, while retaining the signature features of the design.
22. Advisory Neighborhood Commission 2A, by letter dated April 25, 1991, and through testimony at the public hearing, indicated its opposition to the proposed PUD application for the following reasons:
 - a. The proposed project is excessively large for a C-2-C zone district;
 - b. The proposed development contained insufficient residential and excessive commercial usage and the residential units are not likely to encourage genuine long-term residential use;
 - c. The proposed development would have adverse impacts on the environment and the quality of life in the neighborhood, particularly because of the increased vehicular traffic it would generate;
 - d. The economic calculations in the application are faulty and do not justify the applicant's conclusion that the commercial component must be increased at the expense of residential use;
 - e. The application does not meet the requirements for a PUD as set out in Chapter 24 of the Zoning Regulations; and
 - f. The proposed contribution of \$1,000,00 toward off-site housing is both inadequate in size and legally problematic as a result of the recent court ruling in the Blagden Alley/1212 Massachusetts Avenue case.

23. Several persons testified in opposition to the application, including but not limited to, Barbara F. Kahlow, Albert J. Taran, Geoffrey Tyler, Jean Swift, Mr. and Mrs. Henry Ligorie, Fran Albin, Katherine McCarron, Chris Lamb, and Ralph Rosenbaum. Their opposition was based on the following:

- a. Foggy Bottom is not the Central Employment Area;
- b. The applicant has not attempted to address the ANC's objection to the project;
- c. The project has too much commercial FAR, too little residential FAR and too much height and mass for the C-2-C zone;
- d. The apartment units proposed by the applicant will attract corporate or transient occupancy which contributes little to the residential character of the neighborhood and to the city's income tax receipts;
- e. The project does not meet the PUD guidelines;
- f. The proposed project will result in adverse traffic impacts and will negatively affect the ability of emergency vehicles to provide service to the community; and
- g. The building will be unsafe in the evening and will pose security hazards for residents in the neighborhood.

24. The District of Columbia Office of Business and Economic Development (OBED), by memorandum dated July 1, 1991 and by testimony presented at the public hearing, indicated that the applicant would realize an estimated \$21,263,800 gross increase in the value of the property if granted approval for the PUD. OBED concluded that residential development on the site would not need to be subsidized by commercial development and further indicated the following:

"However, this finding does not eliminate consideration of the residential component as a valid proffer in support of the PUD. The PUD would restrict use of the residential component to housing use, as opposed to the all-suites hotel or inn allowance of the C-2-C zone. This could be

viewed as an amenity. Further, to the extent that some commercial addition would reduce the risk concerns of investors and lenders, it may result in development of the housing more quickly than would otherwise occur.

Consideration of the merits for these points is more a planning than economic issue. However, in exercising those judgments, it is important that the PUD incentive is not so generously given as to create competitive imbalances. Other property owners in the vicinity and in similar market areas will compete with the applicant's project for residential and commercial clients. Further, a number of sites in the vicinity of the subject property have been designated as TDR receiving locations. Granting too generous incentives, especially in a slow market period, may erode support for TDR prices -- frustrating achievement of the special use and preservation objectives the TDRs were designed to meet.

While not objecting to the general concept of the project, reconfiguration is recommended to more closely balance the value of public objectives received with the private value created".

25. The Commission concurs, in part, with DPW and ANC-2A that the proposed project will increase traffic in an area that is already operating at a level of service F, the worst category of congestion.
26. The Commission concurs with the opinion of ANC-2A and OP that the ratio between commercial uses and residential uses has not adequately been fulfilled. The Commission also finds that the proposal's great bulk and relative lack of housing would adversely affect the intended development of the neighborhood and the PUD development itself would not provide any amenities to the occupants of the PUD or the neighborhood superior to those provided by a matter-of-right development.
27. The Commission concurs with OBED and ANC-2A and finds that the amenities offered in this case are insufficient as compared to the benefits which would result from approval of this proposal.
28. The Commission finds that the applicant has not met the intent and purpose of Chapter 24 of the Zoning Regulations.

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CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate means of controlling development on the subject site.
2. The development of this PUD does not carryout the purposes of Chapter 24 of the Zoning Regulations, since the development cannot be considered a well-planned residential, commercial and mixed-use project which will offer a variety of building designs and the uses proposed could be achieveable under matter-of-right development.
3. The development of the PUD is not compatible with city-wide goals, plans, programs, is insensitive to the existing environment and is inconsistent with the Comprehensive Plan for the National Capital, as amended.
4. The approval of this application will not promote orderly development in conformity with the entirety of the District of Columbia zone plan, as embodied in the Zoning Regulations and Maps of the District of Columbia.
5. The PUD shall only be granted for projects that are superior in achieving the purpose of the Comprehensive Plan for the National Capital, as amended.
6. The Zoning Commission has accorded ANC-2A, the "great weight" consideration 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 that this application for consolidated review of a Planned Unit Development for Lot 76 in Square 51 at 2200-2226 M Street, N.W. be **DENIED**.

Vote of the Commission taken at the public meeting on September 10, 1991: 5-0 (Tersh Boasberg, Lloyd D. Smith, William L. Ensign, John G. Parsons, and Maybelle Taylor Bennett, to **deny**).

This order was adopted by the Commission at the public meeting on October 21, 1991 by a vote of 3-0: (John G. Parsons, William Ensign and Tersh Boasberg to deny - Maybelle Taylor Bennett and Lloyd D. Smith, not present, not voting).

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In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on NOV 15 1991.



MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission



MADELIENE H. ROBINSON
Acting Director
Office of Zoning

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