

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 833
Case No. 97-9C
(Consolidated PUD and Map Amendment
at 2200 M Street, N.W.)
January 12, 1998

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on September 11, 1997. At that session, the Zoning Commission considered an application from the Millennium Partners of Washington, D.C., Inc. The application requested approval of a planned unit development (PUD) and a related Zoning Map amendment, pursuant to the provisions of Chapter 24 and Section 102 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 April 18, 1997, requested consolidated review and approval of a PUD and Zoning Map amendment from C-2-C to CR for Lot 76 in Square 51 located at 2200 M Street, N.W.
2. Under the PUD process outlined in the Zoning Regulations, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may also impose development conditions, guidelines, and standards which may exceed or be less than the matter of right standards identified for height, FAR, lot occupancy, parking, loading, 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).
3. The PUD site contains approximately 61,538 square feet of land area, located in the northern half of Square 51 which is bounded by 22nd, 23rd, L, and M Streets, N.W. The site is currently used as a surface parking lot and is bounded on the south by a 15-foot wide public alley.

4. The Generalized Land Use Map of the Comprehensive Plan for the National Capital depicts the PUD site as being included in a mixed-use, medium density commercial and high density residential land use category.
5. The subject site is located within a C-2-C zone district. CR zoned property faces the site across M Street, N.W. The applicant requests an amendment to the Zoning Map to include the site in the CR zone designation. Buildings constructed to a height in excess of 100 feet in the area include 2311 M Street, N.W. and 1250 23rd Street, N.W.
6. The C-2-C zone district permits residential or a mix of residential/commercial uses. It permits matter of right development to a maximum height of 90 feet, a maximum floor area ratio (FAR) of 6.0, of which not more than 2.0 FAR may be used for other than residential uses, and a maximum lot occupancy of 80 percent.
7. The CR zone district is designed to encourage a mix of compatible land uses, including residential, retail, and recreational. The CR zone district PUD regulations permit development to a maximum height of 110 feet, a maximum total FAR of 8.0 (with a maximum of 4.0 FAR for commercial use), and a maximum lot occupancy of 100 percent for commercial space and 75 percent for residential space.
8. The PUD site would be developed with an 11-story mixed-use residential/retail/recreational building that would include 240 to 300 residential apartment units, a state-of-the-art health and sports club, and a number of retailers. The building would contain approximately 459,000 gross square feet of floor space and would have a total FAR of 7.46 (5.40 residential FAR and 2.06 commercial FAR).
9. The building's ground floor would include approximately 39,250 gross square feet of retail space, while an additional 30,769 square feet of retail space would be located below-grade and not calculated in the total FAR. The health/sports club would be located on a portion of the building's second and third floors, occupying approximately 87,465 gross square feet of floor space. The second through eleventh floors of the building would house the residential units, occupying approximately 332,103 gross square feet.
10. The PUD would have four levels of underground parking containing approximately 440 to 500 spaces, providing one space for each residential unit and 200 commercial spaces.
11. The original application in this case (April 18, 1997) included a movie theater component consisting of approximately 86,000 gross square feet of floor space along with an additional 45,000 square feet below-grade and not calculated in the building's FAR.
12. Upon further evaluation of the project's proposed theater component based upon comments from the Zoning Commission at set down, comments from the community, and the overall traffic and economic implications, the theater complex was eliminated

and the project was revised to include a larger residential component. The initial filing with the Zoning Commission that referenced this modification was made on August 11, 1997.

13. The proposed project includes the following public benefits and project amenities:
 - a. A project with significant architectural features and uses that would encourage pedestrian traffic in the area and enliven the neighborhood;
 - b. The creation of 240 to 300 residential units;
 - c. The creation of a major revenue source for the District of Columbia in terms of taxes and employment opportunities that would generate approximately \$6 million per year;
 - d. The provision of a First Source Employment Agreement with the D.C. Department of Employment Services and a Memorandum of Understanding with the Local Business Opportunity Commission;
 - e. The replacement of 64 benches, 20 trash receptacles, and the existing flagstone and mortar within Washington Circle (estimated cost of between \$184,000 and \$246,000);
 - f. Landscaping of the three D.C.-owned triangular pieces of property west of Washington Circle (estimated cost of \$10,000);
 - g. The provision of a contribution of \$15,000 per year for three years to the Care-A-Van Program for feeding the homeless; and,
 - h. The provision of a donation of \$10,000 for the cleaning of public spaces in coordination with the Foggy Bottom Association.
14. Through the PUD process, the project includes amenities for the building's future residents and occupants, including a combination of residential and health club facilities and spacious residential units with generous floor-to-ceiling heights.
15. It is estimated that the construction of the project would create 550 one-year, full-time construction jobs and 132 spin-off construction jobs. The operation of the building when completed would create approximately 369 direct full-time equivalent jobs and 77 spin-off jobs.
16. At the commencement of the public hearing in this case, the Zoning Commission determined that the parties would include the applicant, Advisory Neighborhood Commission (ANC) 2A and Ms. Barbara Kahlow. No other persons, groups, or organizations received party status.

17. The applicant submitted revised plans at the public hearing that reflected a number of minor modifications which had been made to the project since the earlier submission of plans on August 11, 1997. Major project components such as FAR, height, mix of uses (and corresponding FARs), number of loading berths, and allocation of parking spaces for the uses remained unchanged. The minor modifications to the project included minor variations of windows on the alley façade, a reduction in the pavilion height by one story on the southern frontage, a shift in the loading area on the alley closer to 22nd Street, and the addition of balconies to the residential units facing the courtyard.
18. The applicant indicated that the project would provide the viability and excitement of downtown mixed-use development and living, and expressed an overall commitment to creating pedestrian traffic in the West End neighborhood, rebuilding the community, and bringing back retail activities and suburbanites into the city.
19. The applicant expressed the desire to strengthen the neighborhood by providing additional tax revenues to the city, more jobs for its residents, increased property values in the area, and expanding housing, recreational and retail choices for District residents.
20. The applicant's architects noted the mixed-use character of the surrounding neighborhood as reflected in the materials, facades, and uses of the buildings. The design of the proposed project also reflects its diversity of uses and those of the area.
21. The architects further discussed the shadow studies that were prepared to show the effects the project would have on surrounding buildings as compared to a matter of right building at 90 feet in height. Those studies indicate that the proposed 110-foot height of the project would generate minimally greater shadow impacts on surrounding structures when compared to a matter of right building.
22. The applicant's traffic engineer stated that the project would not substantially impact traffic patterns in the area, the number of parking spaces provided would be sufficient to meet the demand, and the provision of four loading berths would be adequate to meet the project's needs when combined with the applicant's proposed truck management plan.
23. The traffic engineer further discussed estimated traffic generated by the project during the morning and evening peak hours and concluded that approximately 20 additional trips in all directions would be generated by the building during the evening peak hour as compared to a matter of right structure on the site.
24. The applicant's land use expert cited that the goals of the District's land planners since the 1970's have been that the West End would become an in-town medium and high density residential neighborhood focused along M Street which itself would be lined with retail establishments, restaurants, and entertainment facilities. The completion of the proposed project would help create the critical mass of residential units necessary to attain the vibrant in-town community that was envisioned for the area.

25. The applicant's land planning expert stated that the proposal is not inconsistent with the Comprehensive Plan, the height and bulk of the project are compatible with the existing and expected character of the West End neighborhood, and the provision of from 240 to 300 residential apartment units is the primary amenity. With the project, the number of available apartment units in the area would increase by approximately 15 percent.
26. The applicant has requested the flexibility to make minor changes to the project as follows:
 - a. Add special staircases to the building's residential units on the top floor facing 23rd Street, N.W., leading to a private rooftop terrace; and
 - b. Lower the height of the penthouses along 22nd Street and 23rd Street.
27. The District of Columbia Office of Planning (OP), by memorandum dated September 2, 1997, and by testimony presented at the public hearing, recommended that the application be approved. OP concluded the following:

The proposed project is consistent with other uses in the area and is not inconsistent with the Comprehensive Plan and the site's designation as mixed-use medium density commercial and high density residential as depicted on the Generalized Land Use Map. The height of the proposed structure is not inconsistent with other buildings in the neighborhood. The proposed additional height of 20 feet above the permitted matter of right 90 feet will not significantly impact adjacent residential buildings.

The Office of Planning stated further that the real amenity of the project centers on its provision of a large residential component at this point in time. The amount of residential square footage plus the retail and other amenities being provided will enhance the quality of the neighborhood and will help to anchor residential uses in the area.

28. The District of Columbia Department of Public Works (DPW), by memorandum dated September 4, 1997, supported the proposal and indicated the following:

DPW analyzed the effects of the proposal on the area's transportation system and concluded that it will not generate adverse impacts. DPW analyzed the project based on the applicant's plans submitted on August 11, 1997, which for transportation and traffic review purposes, is identical to the proposal submitted to the Zoning Commission at the public hearing on September 11, 1997.

29. The District of Columbia Metropolitan Police Department (MPD), by letter dated August 15, 1997, stated that it did not appear that the project will adversely affect public safety in the area or generate an increase in the level of police services currently provided. Accordingly, the MPD does not oppose the application.

30. By written submission and testimony at the public hearing, Barbara Kahlow, a party in the proceedings, supported the proposal due to its effect of revitalizing the West End neighborhood through the creation of a large number of residential apartment units, the increased safety it will bring to the area, and its provisions of amenities to the neighborhood.
31. By written submission and testimony at the public hearing, the D.C. Central Kitchen supported the project. The applicant will provide \$15,000 per year for three years to the Kitchen as an amenity associated with the PUD approval.
32. The Downtown Cluster of Congregations, by written submission and testimony at the public hearing, testified in support of the application because of the project's large residential component, its unique retail and recreational uses, the economic benefits of the proposal to the community, and the developer's willingness to work with the neighborhood.
33. By testimony at the public hearing, Sara Maddax supported the proposal because of its large residential component and the developer's willingness to work with the community.
34. By written submission and testimony at the public hearing, James McLeod opposed the project because it would exceed the existing zoning for the area, it would add to traffic volumes, and it would reduce the amount of light available to adjacent buildings.
35. By written submission and testimony at the public hearing, Dorothy Miller opposed the project based on the impact it would have on traffic in the area and the amount of zoning relief being asked for by the applicant.
36. By written submission and testimony at the public hearing, the Carriage House Condominium appeared as a "Person" and opposed the proposal based on concerns related to traffic and loading issues.
37. Advisory Neighborhood Commission (ANC) 2A submitted a letter to the Zoning Commission, dated September 3, 1997, stating that the ANC was unable to reach a majority vote on two resolutions brought before it concerning the application. As a result, the ANC had no official position on the application.
38. District of Columbia Ward 2 Councilmember Jack Evans submitted a letter, dated September 10, 1997, in support of the project citing its benefits to both the neighborhood and the city as a whole, including the addition of approximately \$6 million per year in tax revenues from property, sales, income, parking, and franchise taxes.
39. The Foggy Bottom Association submitted a letter to the Commission, dated September 11, 1997, indicating its support of the application.

40. David Watts, Deputy City Administrator for Business Services and Economic Development, submitted a letter, dated September 11, 1997, in support of the project due to the housing opportunities and economic benefits the proposal will provide for the city.
41. At the close of the hearing, the record of the case was left open for three specific items to be submitted by October 3, 1997. Those items requested by the Commission consisted of the following:
 - a. The applicant shall provide more detailed plans of the rooftop garden located along the southern lot line of the property;
 - b. The applicant shall provide a document that memorializes the specific actions to be taken regarding the improvements to be made in Washington Circle; and,
 - c. The Carriage House Condominium shall provide its response to those materials submitted by the applicant at the public hearing.

All materials requested were submitted in a timely fashion. The parties were permitted to respond to the Carriage House Condominium's submission and to submit proposed Findings of Fact and Conclusions of Law by October 10, 1997.

42. The applicant responded to the Carriage House Condominium's letter of October 3, 1997 and affirmed that, for traffic purposes, the August 11, 1997 applicant's submission to DPW was not substantially different from the September 11, 1997 hearing presentation. In addition, the applicant's proposal to provide loading zones on 23rd and M Streets from 9:30 a.m. to 4:00 p.m. will enhance the overall loading capacity of the project. The applicant's revised truck management plan also addresses the legitimate concerns of the Carriage House.
43. The Zoning Commission finds that the applicant has met the intent and purpose of the Zoning Regulations and the PUD process.
44. The Zoning Commission concurs with the recommendations of OP, DPW, DCOED, and other letters and submissions received into the record that the consolidated PUD application and map amendment should be approved.
45. The Commission finds that the proposed project's residential/recreation/retail uses are appropriate for the site and are consistent with the goals and objectives of the Comprehensive Plan of the District of Columbia.
46. The Commission finds that the proposed height and FAR of the project are consistent with existing buildings in the area and with the height, FAR, and uses permitted in the vicinity. The project will not adversely affect area residents.

47. The Commission concludes that the proposed height of the building will have a minimal impact on the amount of light available to surrounding structures and will not adversely affect the residents of those buildings.
48. The Commission is of the opinion that the large residential component of the project is a significant amenity. Combined with the amenities for the community, the proposed PUD provides sufficient amenities to the neighborhood, to the future residents and commercial occupants of the building, and to the city as a whole.
49. The Commission finds that the project will provide significant benefits to the West End community in the form of increased pedestrian traffic and activity, as well as economic benefits to the entire city based on increased tax revenues of approximately \$6 million per year at the time the project becomes operational.
50. As a result of the findings of DPW and the applicant's traffic engineer, the Commission believes that the provision of approximately 440 to 500 garage parking spaces and four loading berths (in conjunction with the applicant's truck management plan) is sufficient to meet the project's expected parking and loading demands. Overall, the project will not adversely impact area traffic.
51. The Commission agrees that the applicant should be afforded a certain amount of flexibility in making minor adjustments and modifications to the project. Overall, however, the applicant will be required to construct a project that is in accordance with the plans submitted to the Zoning Commission identified as Exhibit No. 69.
52. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC) on November 17, 1997 under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated January 9, 1998, found that the PUD proposal would not 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 the development of the site in a manner consistent with the best interests of the neighborhood and the District of Columbia.
2. The development of this PUD project carries out the purpose of Chapter 24 of the Zoning Regulations to encourage the development of well planned projects that will offer a variety of building types having more attractive and efficient planning and design not achievable under matter of right development.

3. The development of the project is compatible with District-wide and neighborhood goals, plans and programs, and is sensitive to environmental protection and energy conservation efforts.
4. The approval of this application is not inconsistent with the Comprehensive Plan for the National Capital and the purposes of the Zoning Act. The approval of this application will promote orderly development in conformity with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
5. The proposed action can be approved with conditions that ensure that the development will not have adverse impacts on the surrounding community, but will enhance the neighborhood and ensure neighborhood stability.
6. The Zoning Commission notes that ANC-2A had no official position on this application.
7. This application is subject to compliance with D.C. Law 2-39, the Human Rights Act of 1977, as amended.

DECISION

In consideration of the foregoing Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a consolidated planned unit development and zoning map amendment from C-2-C to CR for Lot 76 in Square 51 located at 2200 M Street, N.W. The approval of the PUD and map amendment and the development of the site are subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans prepared by the architectural firms of Shalom Baranes Associates and Gary Handel and Associates, marked as Exhibit No. 69 of the record, as modified by the guidelines, conditions and standards of this order.
2. The site shall be developed with a mixed-use building containing retail uses below grade and at street level, recreational use on portions of the second and third levels, and residential uses on part of the second and third floors and the fourth through eleventh floors.
3. The total floor area ratio (FAR) of the project shall not exceed 7.46. The recreation/retail FAR shall not exceed 2.06, while the residential FAR shall not exceed 5.40, as shown on the plans marked as Exhibit No. 69 of the record.
4. The height of the project shall not exceed 110 feet, as shown on the plans marked as Exhibit No. 69 of the record.
5. The lot occupancy of the project shall be 100 percent.

6. The project shall provide approximately 440 to 500 below-grade parking spaces. The parking shall be provided as generally shown on the plans marked as Exhibit No. 69 of the record. The number of residential parking spaces shall be equal to the number of residential units in the project. The commercial component of the project shall be provided with a total of 200 parking spaces. Four (4) loading berths shall be included in the project as shown on the plans marked as Exhibit No. 69 of the record. The applicant shall also implement the truck management plan submitted on October 10, 1997 and marked as Exhibit No. 51 of the record.
7. The applicant shall be granted project flexibility with respect to the following:
 - a. To vary the location and design of all interior components of the residential and recreation/retail components of the project (including partitions, structural slabs, doors, columns, stairways, and mechanical rooms) provided that the variations do not change the exterior configuration of the building, as necessary to comply with all applicable codes or as required to obtain a final building permit;
 - b. To make minor adjustments in the facade, window and cornice detailing of the project, including, but not limited to, the flexibility to shift the location of the doors to the retail uses and vary the appearance of the retail frontage and signage in order to accommodate different retailer demands;
 - c. To vary the species of plant materials used in any landscaping on the subject site; and,
 - d. The ability to lower the height of the penthouse along 22nd Street, N.W. and along 23rd Street, N.W.
8. The applicant shall provide the following community amenities prior to the issuance of a certificate of occupancy (C of O) for the project, except for subparagraph (c) which shall be provided annually on the effective date of this order:
 - a. Improvements to Washington Circle, including the replacement of 64 benches, 20 trash receptacles, and the existing flagstone and mortar;
 - b. Landscaping of the three D.C.- owned triangular-shaped pieces of property west of Washington Circle;
 - c. A contribution of \$15,000 per year for three years to the Care-A-Van Program for feeding the homeless; and,
 - d. A donation of \$10,000 for the clean-up of public spaces in coordination with the Foggy Bottom Association.

9. The applicant shall enter into a First Source Employment Agreement with the Department of Employment Services to promote and encourage the hiring of District of Columbia residents relative to the construction and operation of the project.
10. The applicant shall provide a Memorandum of Understanding with the Local Business Opportunity Commission (LBOC) to utilize minority business enterprises in the development of the project prior to filing for a building permit.
11. The change of zoning from C-2-C to CR for Lot 76 in Square 51 shall be effective upon the recordation of a covenant as required by 11 DCMR 2409.3.
12. 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 that satisfies the Office of the 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 cause all construction on and use of the subject site in accordance with this order, and any amendment thereto of the Zoning Commission.
13. After recordation of said PUD covenant, the applicant shall immediately file a certified copy of the PUD covenant with the Office of Zoning for the records of the Zoning Commission.
14. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA until the applicant has satisfied the conditions contained in paragraphs 11 and 12 above.
15. The consolidated 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, an application must be filed for a building permit as specified in 11 DCMR 2408.8 and 2409.1. Construction shall commence within three years of the effective date of this order.
16. 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 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 of DCRA to approve permits if the applicant fails to comply with any provision of D.C. Law 2-38, as amended.

Vote of the Zoning Commission at its public meeting on October 23, 1997: 3-0 (John G. Parsons, Herbert M. Franklin and Maybelle Taylor Bennett, to approve; Jerrily R. Kress, not voting, not having heard the case).

This order was adopted by the Zoning Commission at its public meeting on January 12, 1998 by a vote of 3-0: (John G. Parsons, Herbert M. Franklin and Maybelle Taylor Bennett, to approve as amended; Jerrily R. Kress, not voting, not having heard the case).

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In accordance with 11 DCMR 3028, this order is final and effective upon its publication in the
the D.C. Register, that is on JAN 30 1998


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


MADELIENE H. DOBBINS
Director
Office of Zoning

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