

Rhode Island Row Washington, D.C.

Making Joint Development Work: The Federal,
Transit Agency, and Business Perspective

A Business Case Study on Joint Development

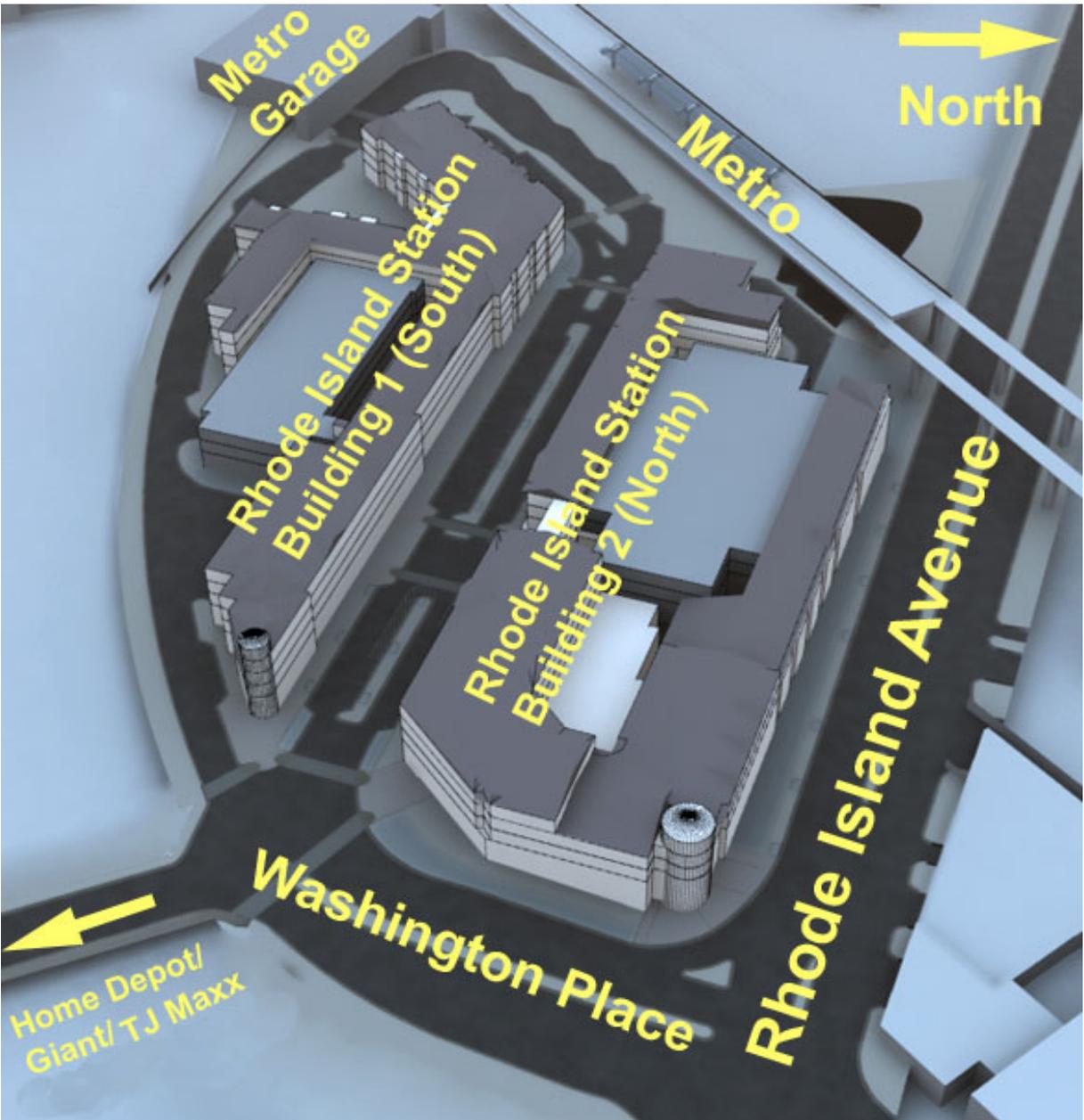
By: John D. Hagner, Womble Carlyle Sandridge & Rice

Federal Transit Administration & American Public Transport
Association Webinar

February 14, 2012



Site Plan



- 8.5 acres
- 274 Residential Units
- 70,000 SF Retail
- Private Main Street
- 2 Private Garages
- 215-car Metro Garage

Joint Development Approval is Just the Beginning of the Challenges

- Additional Requirements and Constraints Imposed by the Washington Metropolitan Area Transit Authority (“WMATA”)
- Zoning Requirements and Restrictions
 - e.g., Inclusionary Zoning for Affordable Housing, Density Limits, etc.
- Local Government Requirements
 - e.g., Leasing to Local Businesses, Using Local Contractors
- Senior/Junior Lender Requirements
- Equity Investor Requirements

Developer must spend significant time turning “head-on collisions” into “near misses”



Description of Land and Parking

- 8.453 acres subdivided into one record lot
- WMATA retained 2.594 acres for its parking garage, staging areas & access road
- Remaining 5.859 acres divided into seven A&T land lots and 14 A&T air rights lots
- Development on two Ground Leases from WMATA to create separately financeable residential and retail components
- Total parking for 746 cars & 6 busses: 215 in WMATA Garage; 62 surface (incl. taxi & Kiss-N-Ride); 149 in Garage No. 1; and 320 in Garage No. 2
 - 309 exclusively for WMATA, 147 exclusively for residential/retail and 290 shared among WMATA, residential & retail

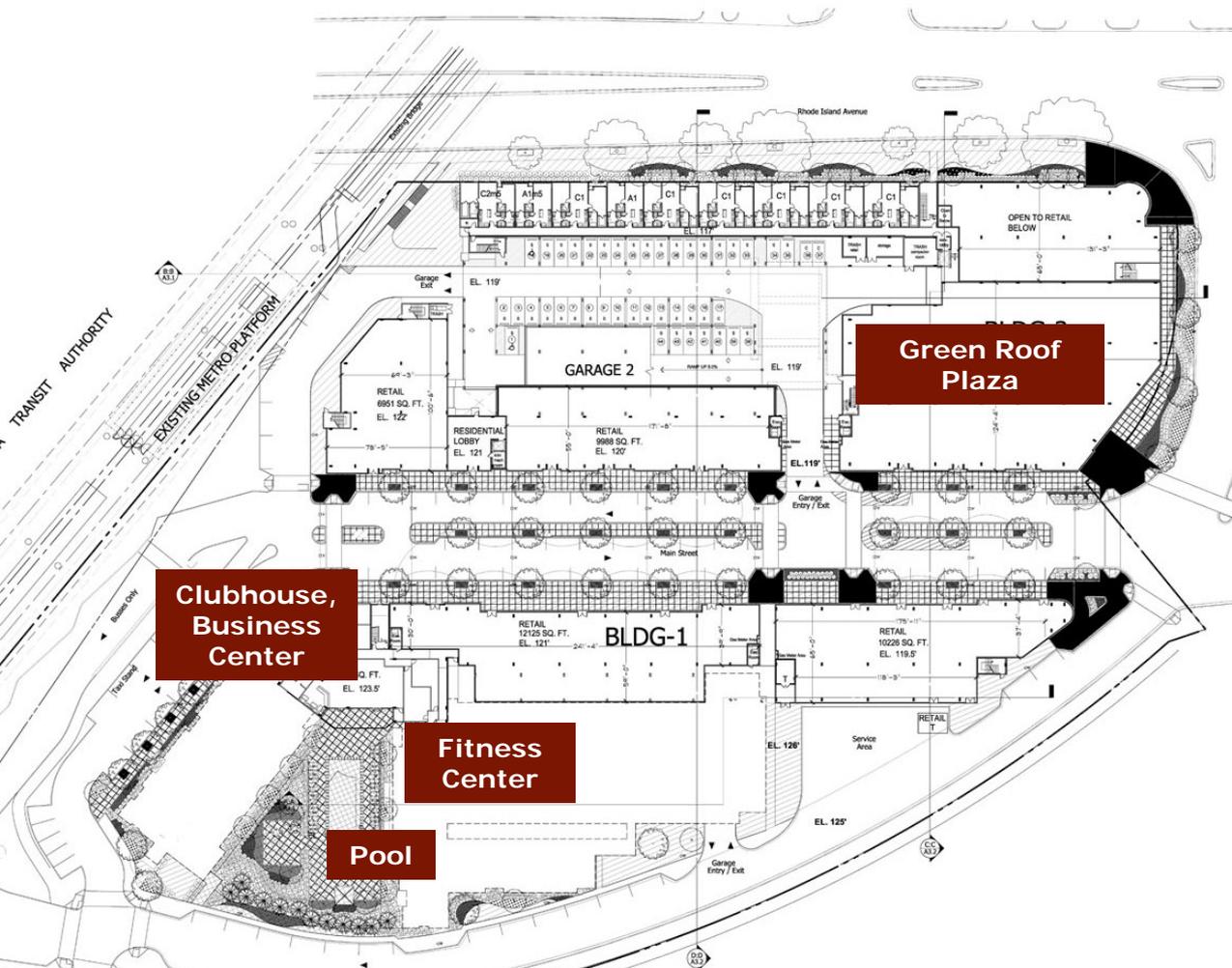


Description of Rhode Island Row

- Mixed-use, transit-oriented development at Rhode Island Ave.-Brentwood Metrorail Station
- 274 Class A apartments
 - 20% (55) are affordable, *i.e.*, will be rented to tenants with 50% or less of Area Median Income
- 67,725 square feet of retail
 - 10% (6,773 square feet) dedicated to local community businesses
- Approved as a Planned Unit Development to address numerous zoning issues

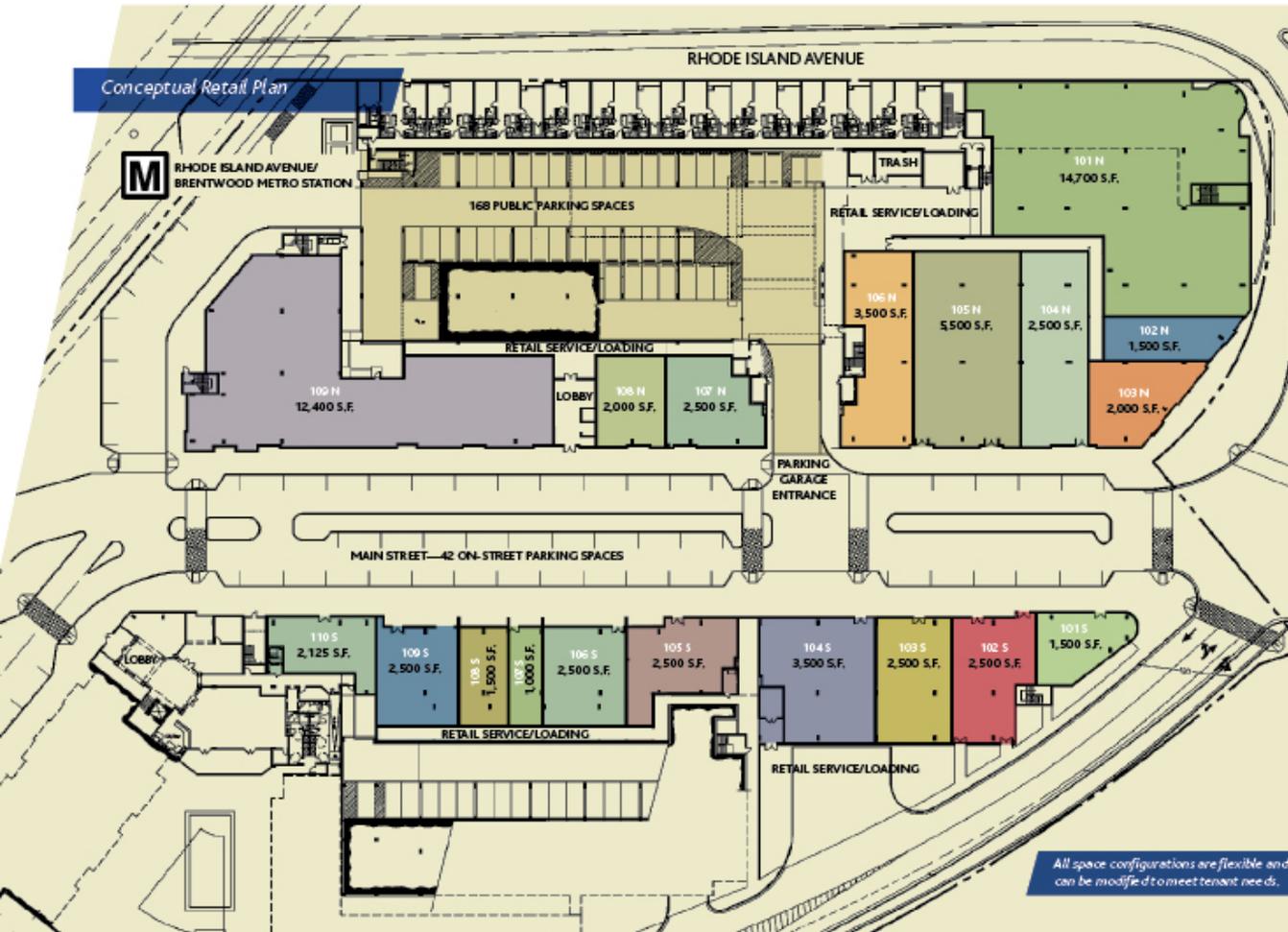


Residential Program



- Bldg 1 – 128 Units
- Bldg 2 – 146 Units
- Total – 274 Units
- 40% 1 BR Units
- 55% 2 BR Units
- 5% 3 BR Units
- Class A Community Amenities:
 - Clubhouse, Business Center, Fitness Center, Pool, Green Roof Plaza, Garage Parking

Retail Leasing Plan



- 70,000 SF
- Neighborhood goods & services
- Restaurants
- Cafes
- Drug store
- Home goods
- Boutiques
- Outdoor seating
- Fountain plaza

Financial Crisis Aborts 2008 Closing

- October 2008 closing aborted by financial crisis in tax-exempt bond markets
- Planned Capital Stack was:
 - Tax-Exempt Bond Financing for residential;
 - Low-Income Housing Tax Credits for affordable units;
 - Conventional Financing for the retail;
 - Payment in lieu of Taxes (“PILOT”) and D.C. Sales Tax Abatement on construction materials only to fund the WMATA parking garage;
 - Institutional Equity; and
 - Developer’s Equity



Restructured Closing in 2010

- Closed in March 2010 with completely different capital structure
- Final Capital Stack was:
 - One FHA/HUD §220 Mixed-Use, Construction-Permanent Loan for both residential and retail;
 - New Markets Tax Credits for retail;
 - Payment in lieu of Taxes (“PILOT”) and D.C. Sales Tax Abatement on construction materials only to fund the WMATA parking garage; and
 - Developer Equity



What do practitioners need to know about joint development projects near transit stations?

- Don't do anything to stop the trains or busses.
- Sequencing is critical
- Nothing happens quickly
- Keep everyone informed and know what restrictions the other parties are working under
 - Developer held over 200 community meetings
- Do not expect WMATA to have any money to spend on developing or maintaining the project

What do practitioners need to know about joint development projects near transit stations (continued)?

- Complex business and legal structures with highly prescriptive requirements and too many documents
 - FHA/HUD §220 Loan requires less than 30% of project's total income from non-residential use
 - New Markets Tax Credits require more than 20% of project's total income from commercial uses
 - To our knowledge, this was the first time a FHA/HUD Loan and New Markets Tax Credits were used together
- Closing lasted 8 business days. Over 400 documents were delivered. The initial funding required 53 wire transfers.



What legal, regulatory, and policy issues must be addressed?

- The Project must be financeable
 - Don't ask a lender/capital source to do something they can't legally do
 - Rent increases in ground leases must be predicable and financeable or the developer will be prevented from refinancing the project in the future
 - For mixed-use projects, everyone must agree to permit the casualty insurance proceeds to be used to rebuild the project as the first priority

What legal, regulatory, and policy issues must be addressed (continued)?

- Financing the WMATA Replacement Improvements, which cannot be encumbered and are considered “off-site” by the lenders, is especially difficult and needs a separate source of funding or a lender with flexible underwriting standards
- Plan your developer entity structure to minimize conflicts among capital sources
 - e.g., the PILOT Note is not underwritten as part of the collateral for the FHA/HUD Loan; it must be held in a different entity from the FHA/HUD Borrower or the FHA/HUD Loan Documents will encumber the payments from the PILOT Note

What legal, regulatory, and policy issues must be addressed (continued)?

- Specific and sometimes conflicting requirements for WMATA, FHA/HUD and D.C. Government:
 - Davis Bacon Act Wage Requirements
 - First Source Employment Agreement
 - Certified Business Enterprise Utilization Agreement
 - Bonding: Completion; Restoration; Payment & Performance
 - FHA/HUD Leasehold Mortgage Requirements
 - Indemnification of WMATA by General Contractor

What are the pitfalls to be avoided?

- WMATA's demands to be protected against every risk
 - Cannot use a single construction contract because of WMATA's requirements. All WMATA Replacement Improvements must be in a separate construction contract
 - Restoration bond in case the developer defaults and abandons construction
 - Don't agree to provide a completion bond for WMATA Replacement Improvements unless you can collateralize it with cash or cash equivalents
 - Many lenders will not permit WMATA to be a dual obligee on the performance and labor and materials payment bonds for the project



What are the pitfalls to be avoided (continued)?

- Continuing guarantees of payment and performance after the project is completed
- WMATA's required provisions allowing it to take over the design and construction contracts after a developer default must be included in design and construction contracts from the beginning or you may have a fight with the architect, engineer and general contractor
- WMATA's right to collect subrents after an uncured default under the ground lease must be subordinate to the rights of any project lender, including mezzanine lenders, e.g., new markets tax credits, and preferred equity

What are the pitfalls to be avoided (continued)?

- If someone wants control, make sure they also take the responsibility for exercising that control, *e.g.*, control of bonds may impact guarantors' liability for completion
- No controls on subleasing
- The timeframes to complete various stages of the pre-construction development activities must be flexible enough to allow for delays caused by other parties in the project and the economy/financial markets. Otherwise, the developer is at the mercy of WMATA's Board granting a time extension after the developer has expended millions of dollars for pre-construction development activities



What are the pitfalls to be avoided (continued)?

- Conflicting requirements among WMATA, lenders, general contractor, and developer
 - Sole obligee or dual obligee on performance and labor and materials payment bonds
 - Priority of developer's obligation to pay indemnification claims
 - FHA/HUD's leasehold mortgage requirements vs. WMATA's ground lease form
 - FHA/HUD's control of "Surplus Cash" needed for other lenders

What are the pitfalls to be avoided (continued)?

- Legal control of and responsibility for the construction site while WMATA busses and patrons must travel through or around it
- Property loss and liability insurance where (i) WMATA is both a passive landlord and an operator of busses traveling through the property, (ii) the developer and general contractor are obligated to use LSDBE businesses who don't typically carry and may not be able to obtain the high liability insurance limits required by WMATA

Context Map: Metro



RHODE ISLAND AVE. METRO

- On Metro's Red Line – most heavily trafficked line with over 100,000 passengers daily
- Just 2 stops from Union Station – 5 stops from Metro Center

Context Map: Metro



Heavily Trafficked Metro Site

METRO BUS

- Rhode Island Ave. Station services 16 Metrobus lines (14 begin/terminate at site) with average weekday ridership of 22,451.
- Metrobuses run continuously throughout the day, from 4:55 am to 1:15 am on weekdays, with up to 41 hourly trips in peak hours
- 7,000 passengers board/alight Metrobus each weekday at Rhode Island Ave. Metro

METRO RAIL

- 12,000 passengers board/alight Metrorail each weekday at Rhode Island Ave. Metro
- Metrorail runs continuously throughout the day, from 5 am to midnight on weekdays

PEDESTRIAN

- 5,160 weekday pedestrians traveling to and from Rhode Island Ave. Metro

VEHICLE

- 2,410 weekday Metro passengers walking to/from commuter parking at Rhode Island Ave. Metro (arrive by car)
- 31,260 weekday vehicular traffic along Rhode Island Avenue

LOCAL RESIDENT METRO RIDERSHIP

- 6,700 local residents traveling to and from Metrobus/Metrorail every day
- The Metrobus routes serviced by Rhode Island Ave. Metro circulate through local neighborhoods, bringing thousands of local residents to the site every day

Local Population & Employment



MAJOR EMPLOYMENT CENTERS

- **CBD:** 2 Metro stops to Union Station, 4 stops to Gallery Place, 5 stops to Metro Center, 6 stops to Farragut North
- **NoMA** (12 Mil SF commercial: 2 Mil complete, 3 Mil underway, 7 Mil planned)
- **Adjacent Employers:** Rhode Island Place retailers, BET headquarters, Brentwood Postal Distribution Facility

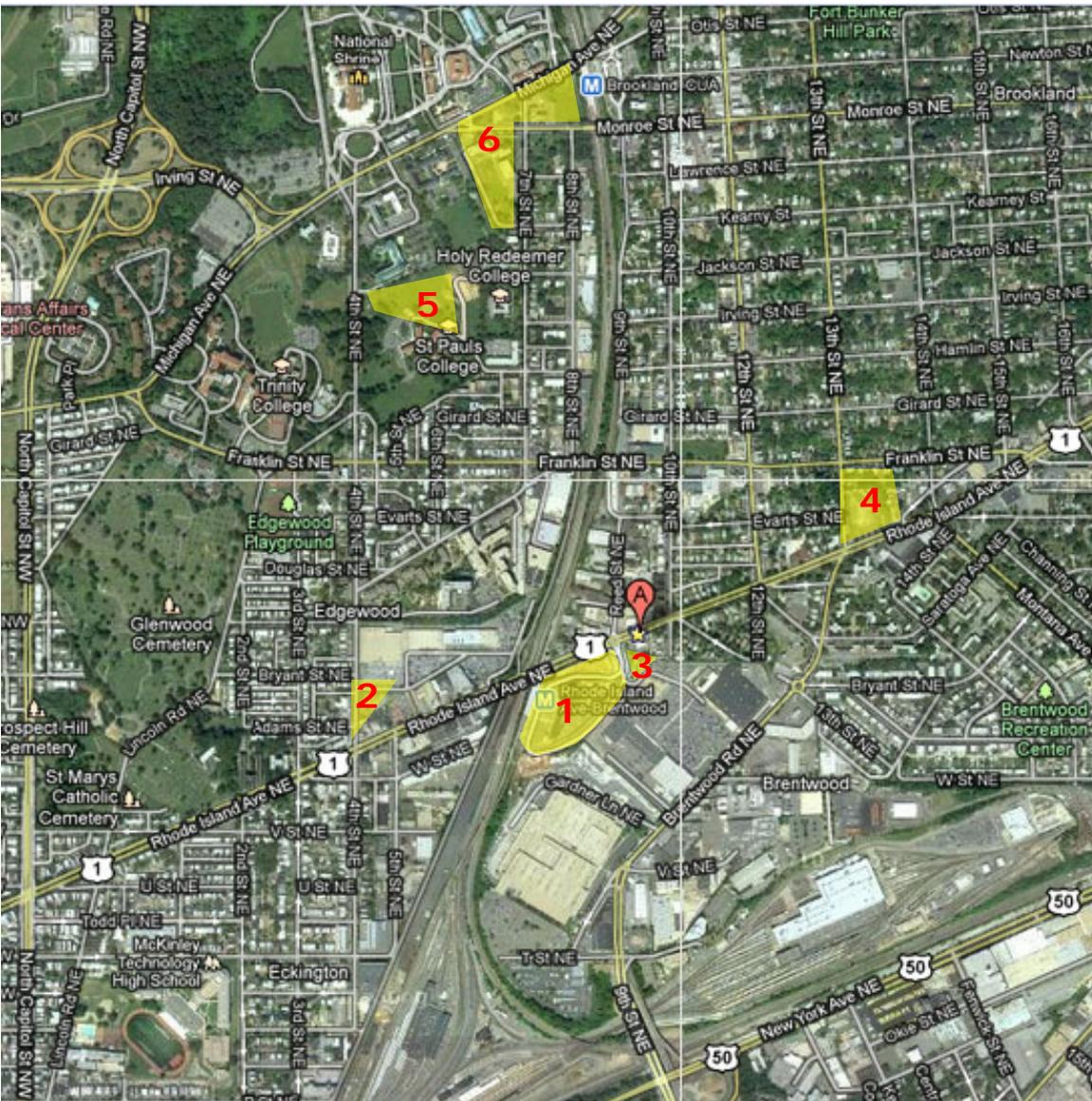
WASHINGTON HOSPITAL CENTER

- 47-acre campus housing Washington Hospital Center, National Rehabilitation Hospital, Children's National Medical Center, Veterans Administration
- Over 13,000 employees
- Continuous shuttle & 2 bus lines to Rhode Island Ave. Metro

UNIVERSITIES

- Catholic, Gallaudet, Howard, Trinity within 2-mile radius of site
- 31,360 students, faculty and staff
- 2 bus lines with direct transport. to Rhode Island Ave. Metro

Surrounding New Residential Development



- 1) **Rhode Island Row** – 274 Apts
- 2) **Rhode Island Avenue Gateway** (4th & Rhode Island Ave.) – 170 Units
- 3) **Israel Manor** (Reed & Washington Pl.) – 60 Sr. Apts.
- 4) **Brookland Sq.** (13th & Rhode Island Ave.) – 257 Units
- 5) **Chancellor's Row** (7th & Jackson) – 237 Townhomes **SALES FROM THE HIGH \$400's**
- 6) **Abdo** – 825 Units

Main Street Entry



visualization by InterFace Multimedia

