

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 03-12S/03-13S
Z.C. CASE NO. 03-12S/03-13S
Square 769, LLC and District of Columbia Housing Authority
(Two-Year Time Extension for Planned Unit Development @ Square 769)
November 10, 2014**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on November 10, 2014. At the meeting, the Commission approved a request from Square 769, LLC and the District of Columbia Housing Authority (collectively the "Applicant") for a time extension for an approved planned unit development ("PUD") for the southern portion of Square 769 to be known as 250 M Street, S E (the "Property"), pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR")

FINDINGS OF FACT

1. Pursuant to Z C Order No 03-12/03-13, the Commission granted preliminary and consolidated approval for property located in the southeast quadrant of Washington, D C and generally bounded by Virginia Avenue on the north, 7th Street on the east, M Street on the south, and 2nd Street on the west. The property consists of approximately 927,000 square feet of land area. The approved overall project includes a maximum of 1,747 residential units, 708,302 square feet of office space, 51,000 square feet of retail space, 1,780 off-street parking spaces, and an approved community center building.
2. The overall development as approved pursuant to Z C Order No 03-12/03-13 included the preliminary approval for the office building to be constructed on the southern portion of Square 769 to be known as 250 M Street, S.E. The approved office building, which is the subject of this extension request, will include a total gross floor area of approximately 234,182 square feet and be constructed to a maximum height of 130 feet, not including roof structures.
3. On May 14, 2007, the Commission approved Z C. Case No 03-12C/03-13C, granting second-stage approval of the office building. Pursuant to Z.C Order No 03-12F/03-13F, which became final and effective on September 26, 2008, the Commission approved a modification to its second-stage approval of the office building at 250 M Street. The Commission extended approval of the modified building pursuant to Z C. Order Nos

03-12K/03-13K and 03-12N/03-13N, such that the Applicant was required to file a building permit application for the office building no later than September 26, 2014, with construction to begin no later than September 26, 2015.

- 4 By letter dated and received by the Commission on September 25, 2014, the Applicant filed a request to extend the validity of the PUD approval for a period of two years. The request would require that an application for a building permit for the office building must be filed no later than September 26, 2016, and construction must be started no later than September 26, 2017. The Applicant's request was supported by a letter from the Applicant's financial mortgage broker (Exhibit ["Ex "] 1C) setting forth details of the Applicant's inability to obtain project financing, a letter from the Applicant's leasing broker (Ex 1D) setting forth details of the broker's efforts to market the approved building to potential tenants, a letter from the Capitol Riverfront Business Improvement District ("BID") (Ex 1E) setting forth its reasons for supporting the project, a report published by Jones Lang LaSalle (Ex 1F) tracking activity in the office market during the first quarter of 2014 and indicating the difficulty in attracting new office tenants, and a report published by Newmark Grubb Knight Frank (Ex 1G) tracking the District's office market in the second quarter of 2014 and indicating the weak leasing market and high office vacancy rates
5. The Applicant submitted evidence that the project has experienced delay beyond the Applicant's reasonable control. The Applicant's mortgage broker indicated that it submitted financing requests to several lenders including Wells Fargo, BB&T Bank, Bank of America, and SunTrust. However, no lender thus far has been interested in financing the proposed office building "on-spec," and lenders are now requiring buildings to be at least 70% pre-leased prior to making loan commitments.
- 6 The Applicant also submitted a letter from its leasing broker indicating that it has actively marketed the approved office building to potential tenants through industry events, brochures, a detailed website, and other marketing materials and engagements. The leasing broker indicated that it has worked diligently to find one or more lead office tenant(s) willing to pre-lease 70% of the office component of the building. The leasing broker has monitored and aggressively competed in all appropriate bids and private lease solicitations, has hosted numerous brokerage events and symposiums, and has coordinated with the brokerage community and the Capitol Riverfront BID to stay abreast of any large potential tenants.
- 7 The Applicant also submitted a letter from the Capitol Riverfront BID indicating that it has been working since 2007 to create a vibrant, economically strong neighborhood with a complementary mix of uses to attract potential office tenants to the building (Ex 1E). The BID worked with the Applicant to present the project to numerous leads, including non-profits, engineering firms, educational institutions, and government and quasi-government prospects.

- 8 The Applicant has also taken additional steps to move forward with the office building, including the following: consolidated the prior existing lots into new assessment and taxation lots, completed construction documents for the office building, which documents have been filed and approved by a third party permit reviewer; submitted plans to DC Water for review and approval, rebranded the office building to “250 M at Canal Park” for marketing purposes; participated in broker tours and project presentations, responded to Request for Proposals for major tenants; completed and submitted an Environmental Impact Screening Form for the project, which was approved, undertook substantive infrastructure work along 2nd Place related to the construction of Canal Park, which infrastructure improvements will serve future improvements at the Property; and, because a portion of the Property was a former Shell gas station, Shell’s environmental consultant, Groundwater Environmental Services (“GES”) submitted a Corrective Action Plan and Health and Safety Plan, which was approved by the D C Department of the Environment and GES continues to monitor the wells by conducting on-site testing of groundwater and soil.
- 9 The Commission finds that the office real estate market has been subject to a severe downturn in financing and sales. This change in the real estate market has rendered it impossible for the Applicant to obtain project financing, despite the Applicant's good faith efforts. Based upon the supporting materials included with the Applicant's extension request, the Commission finds that the Applicant has been unable to obtain project financing for the approved PUD project from the numerous lending institutions that it contacted. Thus, the project cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control. Therefore, the Commission finds that this extension request satisfies the sole criterion for good cause shown as set forth in § 2408.11(a) of the Zoning Regulations.
- 10 On September 25, 2014, the Applicant served a copy of the request on Advisory Neighborhood Commission (“ANC”) 6D, which was the only other party to this case. ANC 6D submitted a letter, dated October 26, 2014 (Ex 4), indicating that at its regularly scheduled and properly noticed public meeting on October 20, 2014, with a quorum present, ANC 6D voted 6-1 in support of the requested PUD extension.
- 11 The Office of Planning (“OP”) submitted a report dated November 3, 2014, indicating that the Applicant meets the standards of § 2408 10 and 2408 11(a) of the Zoning Regulations (Ex 5.) OP thus recommended that the Commission approve the requested two-year PUD extension.
- 12 Because the Applicant demonstrated good cause with substantial evidence pursuant to § 2408 11(a) of the Zoning Regulations, the Commission finds that the request for the two-year time extension of the approved PUD should be granted.

- 13 Based on the OP report, the Commission finds that there has been no detrimental change in the condition of the Property since approval of the PUD that would indicate that the application should not be granted

CONCLUSIONS OF LAW

- 1 The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond, (b) there is no substantial change in any material fact upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD, and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided in § 2408.11. (11 DCMR § 2408.10.) Subsection 2408 11 provides the following criteria for good cause shown. (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control, or (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order
2. The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond
- 3 The Commission concludes there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD
- 4 The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21, D.C. Official Code § 1-309 10(d)) to give great weight to the affected ANC's written recommendations. ANC 6D submitted a letter in support of the requested extension. (Ex 4.) The Commission carefully considered the report in its deliberations and has given ANC 6D's recommendation great weight in approving this application.
5. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623 04) to give great weight to OP recommendations. OP submitted a report indicating that the Applicant meets the standards of § 2408.10 and 2408.11(a) of the Zoning Regulations and therefore recommended that the Commission approve the requested extension. (Ex

- 5) The Commission carefully considered the OP recommendation in its deliberation and has given OP's recommendation great weight in approving this application
6. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11(a). Specifically, the Applicant has been unable to obtain sufficient project financing for the PUD, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control
- 7 Subsection 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11.
8. The Commission concludes that a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408 11 of the Zoning Regulations.
- 9 The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

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 the application for a two-year time extension of for the approved planned unit development ("PUD") for the southern portion of Square 769 to be known as 250 M Street, S.E. approved in Z C Case No 03-12N/03-13N, subject to the following condition.

The District of Columbia Housing Authority shall provide an update on the overall PUD status, including projections for delivery of the remaining affordable housing units, as part of Zoning Commission cases 03-12Q/03-13Q and 03-12R/03-13R

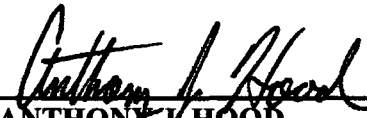
The project approved by the Commission shall be valid until September 26, 2016, within which time an application shall be filed for a building permit, as specified in § 2409 1 of the Zoning Regulations. Construction must commence no later than September 26, 2017

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions In accordance with the D C. Human Rights Act of 1977, as amended, D.C Official Code § 2-1401 01 et seq , ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identify or expression, familial status, family

responsibilities, matriculation, political affiliation, disability, source of income, genetic information, or place of residence or business Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action

On November 10, 2014, upon the motion made by Commissioner Turnbull as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Peter G May, Robert E Miller, and Michael G Turnbull to adopt)

In accordance with the provisions of 11 DCMR §3028.8, this Order shall become final and effective upon publication in the *D C Register*, that is, on December 26, 2014



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING