

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 03-12N/03-13N
Z.C. CASE NO. 03-12N/03-13N
Square 769, LLC and District of Columbia Housing Authority
(Two-Year Time Extension for Planned Unit Development @ Square 769)
November 14, 2012**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on November 14, 2012. 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 2nd Street on the west, 7th Street on the east, Virginia Avenue on the north, and M Street on the south. 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 the 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. The Commission approved the last order affecting the office building in Z.C. Order No. 03-12F/03-13F, which became effective upon publication in the *D.C. Register* on November 26, 2010. Z.C. Order No. 03-12F/03-13F requires the Applicant to file an application for a building permit for the office building no later than September 26, 2012. Construction must begin no later than September 26, 2013.
3. By letter dated and received by the Commission on September 24, 2012 the Applicant filed a request to extend the validity of the PUD approval for a period of two years. The

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ZONING COMMISSION

District of Columbia
ZONING COMMISSION
CASE NO. 03-12N/03-13N
EXHIBIT NO. 7
Columbia
CASE NO. 03-12S/03-13S
EXHIBIT NO. 1A

request would require that an application for a building permit for the office building must be filed no later than September 26, 2014, and construction must be started no later than September 26, 2015. The Applicant's request was supported by a letter from the Applicant's financial mortgage broker setting forth details of the Applicant's inability to obtain project financing, and a letter from the Applicant's leasing broker setting forth details of the broker's efforts to market the approved building to potential tenants.

4. The Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. The Applicant's mortgage broker indicated that it submitted financing requests to several lenders including Wachovia (now Wells Fargo), BB&T Bank, Bank of America, SunTrust, and Local Initiatives Support Corporation. 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. The Applicant also indicated that in 2009, the Applicant explored the opportunity to utilize New Market Tax Credits to finance the project with the requirement of leasing the building to several non-profits. However, after several months of negotiations the tenants decided to remain in their current location and the deal collapsed. Furthermore, in July 2012, the Applicant worked with the District of Columbia Housing Authority's ("DCHA") wholly-owned subsidiary, District of Columbia Housing Enterprises ("DCHE"), to submit an application to receive a New Market Tax Credit allocation for the Project. The application is currently pending.
5. The Applicant also submitted a letter from its leasing broker indicating that since the project was initially approved, the company has worked to rebrand the building to "250 M at Canal Park" to give the building a sense of identity and differentiate it from competitors by recognizing the proximity to the future Canal Park. The leasing broker indicated that it has also created brochures, a website, and other marketing materials to distribute to potential tenants. The leasing broker further stated that it has worked with Capital Riverfront Business Improvement District to host brokerage events and symposiums to create interest in the building as well as the Capital Riverfront neighborhood. The leasing broker has also presented the project to numerous leads including non-profits, engineering firms, educational institutions, government and quasi-government prospects in an effort to pre-lease 70% of the building, which is the threshold required to obtain construction financing.
6. 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, responded to several Request for Proposals for major tenants; and completed and submitted an Environmental Impact Screening Form ("EISF") for the project in March 2008. The EISF was approved in June 2009.

- 7 Further, in the fall of 2011, infrastructure work along 2nd Place related to the construction of Canal Park was installed that will also serve the future improvements at the site of the approved office building. The work included the following: installation of the private service drive entrance curb cut and ramp on 2nd Place, installation of a Pepco duct bank to serve the future transformers for the approved office building located in the private service drive; installation of a grey water storm drain system to be connected to the approved office building, installation of curb gutter, handicap ramps, crosswalk, re-grading, paving, striping, signage, storm drain, street lights, street trees and tree pits, temp sidewalk, layby parking spaces along 2nd Place; and installation of a new M Street fire hydrant to allow the future approved office building to have the proper FDC connection and distance from a fire hydrant. These public space improvements were funded in part by DCHA, a partner in the approved office building development
- 8 The Commission finds that the real estate market has been subject to, and continues to suffer from, severe downturns in financing, construction, sales and other impediments. This major change in the real estate market has rendered it practically 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 Applicant has been unable to obtain project financing for the approved PUD project from the numerous lending institutions 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
- 9 On September 24, 2012, 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 November 13, 2012 in support of the requested extension. (Exhibit ["Ex "] 6)
- 10 The Office of Planning ("OP") submitted a report dated October 22, 2012 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
11. 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
- 12 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 Zoning 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 6) 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 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

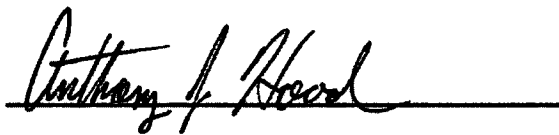
DECISION

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. 03-12F/03-13F The project approved by the Commission shall be valid until September 26, 2014, 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, 2015

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 14, 2012, upon the motion made by Commissioner May as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to adopt; third mayoral position vacant, not voting)

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 March 1, 2013

A handwritten signature in black ink, appearing to read "Anthony J. Hood", written over a horizontal line.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

A handwritten signature in black ink, appearing to read "S.A. Bardin", written over a horizontal line.

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING