

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance (via-email)
From: Sharon S. Schellin ^{S3}
Secretary to the Zoning Commission
Date: June 11, 2009
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on June 19, 2009:

1. Z.C. Order No. 06-14A (Case No. 06-14A).

Attachment

ZONING COMMISSION
District of Columbia
CASE NO. 06 14A
EXHIBIT NO. 5

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-14A
Z.C.CASE NO. 06-14A

MRP Realty, LLC

Two-Year Time Extension for PUD at Florida and New York Avenues, N.E.
(Square 3584, Lots 23, 811, 812 and 813)

June 8, 2009

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on June 8, 2009. At the meeting, the Commission approved a request from MRP Realty, LLC (the "Applicant") for a time extension for an approved planned unit development ("PUD") for property consisting of Lots 23, 811, 812 and 813 in Square 3584 ("the Subject Property"), pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations. The Commission determined that this request was properly before it under the provisions of § 2408.10 of the Zoning Regulations.

FINDINGS OF FACT

1. By Zoning Commission Order No. 06-14, the Commission approved on the Subject Property a PUD with residential, hotel, office, and retail uses. The PUD consists of two buildings. One building will have approximately 229,690 square feet of gross floor area devoted to residential use and approximately 120,443 square feet of gross floor area devoted to hotel use. Eight percent of the residential floor area will be reserved for persons whose income does not exceed 80% of the area median income. The second building will have approximately 601,896 square feet of gross floor area devoted to office use. The PUD will have approximately 7,000 square feet of retail, primarily fronting on Florida Avenue. The floor area ratio ("FAR") for the project is approximately 7.06 and the maximum height is 130 feet.
2. Zoning Commission Order No. 06-14 became effective upon its publication in the District of Columbia Register on June 29, 2007. Pursuant to Condition No. 18 of that order and 11 DCMR § 2408.8, the Commission's approval was valid for a period of two years. If no application for a building permit or motion for a time extension was filed within that timeframe, the PUD approval would expire. By letter dated and received by the Commission on April 9, 2009, the Applicant filed a request to extend the validity of the PUD approval for a period of two years, such that an application for a building permit must be filed no later than June 29, 2011, and construction must commence no later than June 29, 2012.
3. The letter indicates that the project has experienced delay beyond the Applicant's control. In this case, the Subject Property has been cleared and is ready for development. However, due to the present economic climate, the Applicant has been unable to obtain sufficient financing for the construction of the approved project. The financial crisis has frozen the credit markets, making construction loans for real estate development projects extremely difficult to obtain. The difficulties in the credit markets are further exacerbated by the oversupply of multifamily units and office space – two of the three uses proposed for the PUD. Due to the interconnected nature of the mixed-use development, the inability to secure financing for any component of the PUD severely compromises the ability to develop

the other components of the project. The apartment and hotel components must be constructed simultaneously, and these two uses must be developed prior to or concurrent with the office component.

4. The only other party to this application was Advisory Neighborhood Commission ("ANC") 5C. The Applicant served a copy of its request on ANC 5C, which did not submit a response regarding the Applicant's request.

CONCLUSIONS OF LAW

1. Pursuant to § 2408.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request made before the expiration of the approval. Section 2408.11 provides that an extension of the validity of a PUD may be granted by the Commission for good cause shown if an applicant has demonstrated with substantial evidence one or more of the following criteria: (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 § 208.10(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 facts that would undermine the Commission's justification for approving the original PUD.
4. 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.
5. Section 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. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.
6. 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.

7. 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

1. 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 the PUD approved in Zoning Commission Case No. 06-14.
2. The final PUD approved by the Commission shall be valid until June 29, 2011, within which time an application must be filed for a building permit, as specified in Section 2409.1 of the Zoning Regulations. Construction must commence no later than June 29, 2012. If both actions do not occur by the dates specified, the PUD. Failure to take these actions will result in the expiration of the PUD approval as of the applicable date.
3. 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, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, 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. The failure or refusal of the Applicants to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On June 8, 2009, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, this Order was **ADOPTED** by the Zoning Commission at its public meeting by a vote of 4-0-1 (Anthony J. Hood, William W. Keating, III, Peter G. May, and Michael G. Turnbull to adopt; Konrad S. Schlater, not present, 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 June 19, 2009.