

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance (via-email)
From: Sharon S. Schellin 
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. 06-24B (Case No. 06-24B).

Attachment

ZONING COMMISSION
District of Columbia
CASE NO. 06-24B
EXHIBIT NO. 5

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-24B
Z.C. CASE NO. 06-24B
DCO Realty, Inc.
Two-Year Time Extension for PUD at 2400 14th Street, N.W.
(Square 2661, Lot 219)
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 DCO Realty, Inc. (the "Applicant") for a time extension for an approved planned unit development ("PUD") for property consisting of Lot 219 in Square 2661 (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. 06-24, the Commission approved on the Subject Property a mixed-use PUD with retail and service uses at the ground level and an apartment house, including affordable units on the upper floors. The floor area ratio ("FAR") for the PUD will be a maximum of 6.0; and the building will have nine floors and a maximum height of 90 feet. The project also includes a two-level underground parking garage for the residential units with approximately 158 parking spaces and 18 surface retail parking spaces. The parking and service loading areas will have access from the two-way, 20-foot public alley on the west side of the Property.
2. Corrected Order No. 06-24 became effective upon its publication in the District of Columbia Register on April 20, 2007. Pursuant to Condition No. 12 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 a request for a time extension was filed within that period, the PUD approval would expire. By letter dated and received by the Commission on April 14, 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 April 20, 2011, and construction must commence no later than April 20, 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 uncertain 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, forcing the Applicant to pursue funding from sources other than traditional lending institutions, including institutional investors, pension funds and others. As of the date of the letter, a financial package sufficient to support the project had not come to fruition.
4. The only other party to this application was Advisory Neighborhood Commission ("ANC") 1B. The Applicant served a copy of its request on ANC 1B, 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 Applicant 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 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. 06-24.

2. The final PUD approved by the Commission shall be valid until April 20, 2011, within which time an application must be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than April 20, 2012.
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 Keating, 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.