

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: August 24, 2009

Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on August 28, 2009:

1. Z.C. Order No. 05-17C/05-324C (Case No. 05-17C/05-32C);
- ✓ 2. Z.C. Order No. 06-29A (Case No. 06-29A);
3. Z.C. Order No. 06-31B (Case No. 06-31B); and
4. Z.C. Order No. 06-43A (Case No. 06-43A).

Attachment

06-29A
7

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-29A

Z.C. Case No. 06-29A

(Washington Value Add I LLC – Two-Year PUD Time Extension @ Square 72, Lot 74)
July 27, 2009

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on July 27, 2009. At the meeting, the Commission approved a request from Washington Value Add I LLC (the "Applicant") for a time extension for an approved planned unit development ("PUD") for property consisting of Lot 74 in Square 72 (the "Subject Property") pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District Municipal Regulations ("DCMR").

FINDINGS OF FACT

1. By Z.C. Order No. 06-29, the Commission approved a PUD for the Subject Property and an application to amend the Zoning Map from the R-5-E Zone District to the CR Zone District for the Subject Property. The Subject Property consists of approximately 31,244 square feet of land area. The approved PUD includes plans to renovate and reconfigure the existing hotel and to extend the height of the building from 90 feet to 110 feet with a two-story addition. This expansion will increase the gross floor area to contain approximately 217,684 square feet and will have a density of 6.97 FAR.
2. The order became effective on July 13, 2007, and pursuant to 11 DCMR § 2408.8, will expire on July 13, 2009 unless an application is filed for a building permit.
3. By letter dated and received by the Commission on June 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 must be filed for a building permit for the PUD no later than July 12, 2011 and construction must start no later than July 12, 2012. The letter indicates that the project has experienced delay beyond the Applicant's control, specifically the evaporation of construction finance in the hospitality industry and the ongoing global economic recession, since the approval by the Commission. As the Commission has found in a number of recent cases, the real estate market has been subject to, and continues to suffer from, severe financing, construction, sales and other impediments.
4. The Applicant indicated in its letter that it has worked diligently to secure financing for the project, and has retained the hotel management company Capital Hotel Management LLC to extract the necessary capital from the property through the careful management of the hotel assets and the evaluation of refinancing/financing options available to construct this addition. To date, the Applicant indicated that it has been faced with impediments directly relating to the economic recession specifically: (1) the virtually non-existent financing in the hospitality industry; (2) the nature of the hotels in their inability to pre-lease to obtain loans; (3) the overall depression of the hotel hospitality industry that is not expected to recover until the first quarter of 2011.

5. The only other parties to this application are Advisory Neighborhood Commission ("ANC") 2A, the West End Citizens Association ("WECA") and the Foggy Bottom Association ("FBA"). The Applicant served a copy of its request on the parties. The representative from ANC 2A02 submitted a letter advising the Commission that the ANC lacked a quorum at its July 15, 2009, meeting and could not take an official position on the extension request. It was noted, however, that the two members present did support the application. WECA and FBA did not file responses to the record.

CONCLUSIONS OF LAW

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.

The Commission concludes 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.

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.

The Commission concludes the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a), the Applicant's inability to obtain sufficient project financing for the PUD, following its diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond its control.

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.

The approval of the time extension is not inconsistent with the Comprehensive Plan.

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. No party has generated such a factual issue.

DECISION

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby Orders that the validity of Z.C. Order No. 06-29 be extended for a period of two years, such that an application must be filed for a building permit for the PUD no later than July 12, 2011 and construction must start no later than June 12, 2012.

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 identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which 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 applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On July 27, 2009, upon the motion of Chairman Hood, as seconded by Vice Chairman Keating, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad S. Schlater, Peter G. May, 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 August 28, 2009.