

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 10, 2009 *SS*
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on August 14, 2009:

1. Z.C. Order No. 06-34A (Case No. 06-34A).

Attachment

ZONING COMMISSION
Dist. of Columbia
CASE NO. 06-34A
EXHIBIT NO. 18

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-34A
Z.C. Case No. 06-34A
Extension and Modification to Approved Consolidated Planned Unit Development
LAT PYD I
(Square 1096, Lots 51, 52, 53, 54, and 55)
March 9, 2009

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on March 9, 2009. At the meeting, the Commission approved a request from LAT PYD I (the "Applicant") for a minor modification and a time extension for an approved planned unit development ("PUD") for Lots 51, 52, 53, 54, and 55 in Square 1096, located at 1705-1729 East Capitol Street, S.E. ("Property") pursuant to the District of Columbia Zoning Regulations. The Commission determined that this modification and time extension request was properly before it under the provisions of §§ 2409.9 and 2408.10 of the Zoning Regulations.

FINDINGS OF FACT

1. By Order No. 06-34, dated September 10, 2007, the Commission approved applications from Comstock East Capitol, LLC ("Comstock") for a consolidated PUD and a related map amendment (from R-4 to R-5-B) (collectively, the "PUD") to allow construction on the Property of a 133-unit apartment building containing approximately 112,599 square feet of gross floor area, building density of 2.64 FAR, and maximum building height of 49.9 feet. The Order became final and effective on December 14, 2007.
2. On September 24, 2008, PGN Architects, PLLC. submitted a request to the Commission on behalf of the Applicant, who had acquired the Property from Comstock in December 2007, requesting a minor modification to the PUD. The minor modification request, made pursuant to the Commission's authority established in §§ 2409.9 and 3030 of the Zoning Regulations, sought an increase in the total number of residential units provided in the PUD (from 133 to up to 141 units), with no change requested to the exterior appearance of the building or the community benefits offered.
3. By letter dated and received by the Commission January 23, 2009, counsel for the Applicant filed a supplemental request to extend the validity of the PUD approval for a period of one year, to December 10, 2010, in addition to the minor modification. The letter describes the nature of the minor modification and indicates that the basis for extension of the validity of the PUD is as follows:

The Applicant acquired the Property in December 2007, as the national real estate market, especially residential real estate, was beginning to show signs of slowing after years of expansion. The Applicant moved forward with its acquisition given the Property's gateway location and the great potential for redevelopment of the site, which has remained vacant for many years. Subsequent to the Applicant's acquisition of the Property, the region's real estate market has witnessed further

precipitous deterioration, impacted dramatically by the freezing of debt markets in the summer of 2008.

The Applicant's plan upon acquiring the Property was to move forward with construction of the approved project immediately. However, as a result of the dramatic market forces at work, and out of an abundance of caution in moving forward with such a sizeable project, the Applicant has spent the past several months reviewing the approved plans with the goal of providing the highest quality product at the most marketable and affordable level for potential homebuyers. This review, undertaken in consultation with the architects who designed the approved PUD, has led the Applicant to redesign the interior layout of the Project, thereby increasing the overall unit count from 133 units to up to 141 units. This redesign, which will have no impact on the exterior design or massing of the building, will actually increase the number of one and two bedroom units in the building and is expected to increase the marketability of the units and overall economic feasibility of the project. The Applicant is requesting an additional one (1) year extension for the validity of the PUD to allow it and its architects sufficient time to complete construction drawings to reflect the various changes needed to the interior of the building to allow for the increased unit count without impacting the design or massing of the overall project.

4. The Applicant served the applications on Advisory Neighborhood Commissions ("ANC") 6A and 6B, the parties to the case. ANC 6B submitted a report dated December 8, 2008, indicating it had no objection to the modification request. ANC 6A did not submit a report. Neither ANC submitted a report regarding the time extension request.
5. The District of Columbia Office of Zoning referred this matter to the District of Columbia Office of Planning ("OP") for analysis and recommendation. By memorandum dated March 6, 2009, OP recommended that the Commission approve the requested extension of the PUD validity and minor modification.
6. Pursuant to notice, a public meeting of the Commission was held on March 9, 2009. At the meeting, the Commission considered the requests of the Applicant and the recommendation of the Office of Planning. The Commission concurs with OP and the Applicant. The Commission also determines that an extension of time of the validity of the PUD is in the best interests of the District of Columbia and is consistent with the intent and purposes of the Zone Plan.

CONCLUSIONS OF LAW

Extension Request

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 and all parties

are allowed thirty (30) days to respond; (b) there is no substantial change in any material facts 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) substantial evidence there is good cause for the extension based on the criteria established in § 2408.11. (11 DCMR § 2408.10.) The three criteria are: (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. (11 DCMR § 2408.11.)

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 thirty (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 there is good cause for the extension of time because of factors beyond the Applicant's reasonable control. The Applicant acquired the property as the national real estate market began to slow after years of expansion, and the market has deteriorated further since that time. These changes in the residential real estate market forced the Applicant to re-evaluate the project in light of current market conditions, and in part, re-design some of the interior features of the project to ensure that it has a high quality product that is marketable and economically feasible in the changed conditions. This process caused a delay in project warranting the one year extension requested by the Applicant.

Section 2408.12 of the Zoning Regulations provides that the Zoning Commission shall 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. The Commission concludes that there is no material factual conflict in issue and that consideration of the request for extension is appropriate without need for a public hearing.

Modification Request

Section 2409.9 of the Zoning Regulations authorizes the Commission to approve those proposed modifications to an approved PUD that are beyond the limited scope of authority granted to the Zoning Administrator. Furthermore, § 3030 of the Zoning Regulations provides for an expedited "Consent Calendar" procedure, allowing the Commission to make minor modifications and

technical corrections to an approved PUD Order without need for a public hearing. Pursuant to § 3030.2, "minor modifications" are those modifications of little or no consequence.

The Commission concludes the requested modification can be approved without a hearing because of the relatively minor consequences of the change. The Applicant has re-designed the interior of the building, resulting in an increase in the number of units from 133 to 141, which represents a roughly 6% increase. This change does not affect the exterior design of the building in any way. Nor does it affect the benefits and amenities offered by the Project.

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 Zoning Commission Order No. 06-34A be extended for a period of twelve (12) months; that is, until December 14, 2010, within which time application must be made for a building permit. Construction shall start not later than December 14, 2011.

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 minor modification of the approved PUD. Finding of Fact 11 of Z.C. Order No. 06-34 is revised to read as follows (deletions are shown in strikethrough text, new text is bold and underlined):

11. The subject property is presently improved with a vacant apartment building that contains 81 units. The building was constructed in 1921 and is a nonconforming structure. The Applicant intends to demolish the existing structure to allow the construction of a ~~133~~**141**-unit apartment building containing approximately 112,599 square feet of gross floor area. The new building will have an overall density of 2.64 FAR and will rise to a maximum height of 49.9 feet. Eleven of the building's ~~133~~**141** units will be set aside for households earning not more than 80 percent of Metropolitan Washington, DC, Area Median Income ("AMI"). The project will also include a below-grade garage containing approximately 113 parking spaces.

Condition 1 of Z.C. Order No. 06-34 is revised to read as follows (new text is shown in bold and underlined text):

1. The PUD shall be developed substantially in accordance with the plans prepared by PGN Architects, dated June 21, 2006, and as amended or supplemented by drawings dated October 23, 2006, November 28, 2006, May 29, 2007, and June 25, 2007, marked as Exhibits 3, 11A, 13, 38, and 52, respectively, in the record, **and as supplemented by the revised plans submitted by PGN Architects, PLLC, dated September 24, 2008**

(marked as Exhibit 1 to Z.C. Case 06-34A), the Applicant's written submissions to the record, including its post-hearing submission dated June 25, 2007, and as further modified by the guidelines, conditions, and standards herein.

The request for extension of the PUD was adopted by the Zoning Commission at its public meeting on March 9, 2009, by a vote of 5-0-0 (Anthony J. Hood, Gregory Jeffries, William Keating, Peter May, Michael Turnbull to adopt (Jeffries and Turnbull by absentee vote)).

The request for minor modification of an approved PUD was adopted by the Zoning Commission at its public meeting on March 9, 2009, by a vote of 4-0-1 (Anthony J. Hood, William Keating, Peter May, and Michael Turnbull (by absentee vote to adopt, Gregory Jeffries, not present, not voting)).

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 Applicant 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.

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 14, 2009.