

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



November 21, 2011

Mr. Matthew LeGrant
Zoning Administrator
D.C. Department of Consumer and Regulatory Affairs
1100 4th Street, S.W., 3rd Floor
Washington, D.C. 20024

Re: Revisions to the Approved Planned Unit Development approved by Z.C. Order Nos. 08-14 and 08-14A (Kelsey Gardens Property Company, LLC, Consolidated PUD and Related Map Amendment @ 1500 Block 7th Street, N.W.)

Dear Mr. LeGrant:

This letter is in response to your letter dated November 3, 2011, addressed to Cynthia A. Giordano and copied to the Secretary of the Zoning Commission regarding the project known as Kelsey Gardens which is subject to Z.C. Case Order Nos. 08-14 and 08-14A. In your letter you authorized several modifications to the project, including relocation of the fitness center to the ground floor of the multi-family building, and counting the fitness center as a retail use.

The Commission considered your letter at its November 16, 2011 public meeting, and authorized me to send you this letter to communicate its reaction. The Commission concluded the fitness center is not a retail use, that locating the fitness center on the ground floor violates Condition 5 of Z.C. Order No. 08-14 ("PUD Order"), as well as 11 DCMR §2409.2, and that approving this change exceeds the Zoning Administrator's authority provided by 11 DCMR § 2409.6.

Condition 5 of the PUD Order provides that "[t]he multi-family building shall contain approximately 14,924 square feet of retail uses consistent with the final ground floor plans contained in Exhibit 69A." Section 2409.2¹ provides that the Zoning Administrator shall not approve a permit application for a PUD unless the plans conform in all respects to the plans approved by the Commission. Section 2409.6²

¹ 2409.2 The Zoning Administrator shall not approve a permit application unless the plans conform in all respects to the plans approved by the Commission, as those plans may have been modified by any guidelines, conditions, or standards that the Commission may have applied.

² 2409.6 The Zoning Administrator shall have the authority to approve minor modifications in the final plans as approved by the Commission. These modifications shall be limited to the following:

- (a) A change not to exceed two percent (2%) in the height, percentage of lot occupancy, or gross floor area of any building;
- (b) A change not to exceed two percent (2%) in the number of residential units, hotel rooms, institutional rooms, or gross floor area to be used for commercial or accessory uses;
- (c) A change not to exceed two percent (2%) in the number of parking or loading spaces; and
- (d) The relocation of any building within five feet (5 ft.) of its approved location, in order to retain flexibility of design, or for reasons of unforeseen subsoil conditions or adverse topography.

ZONING COMMISSION
District of Columbia
EXHIBIT NO. 08-14
CASE NO. 08-14
EXHIBIT NO. 77

provides a limited exception to that rule, giving the Zoning Administrator flexibility to approve plans only if the variation fits within four stated parameters, including a change not to exceed two percent in the gross floor area to be used for commercial uses. (11 DCMR §2409.6(b).)

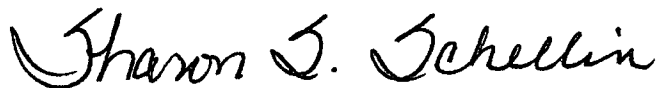
The Zoning Commission disagrees with your conclusion that the fitness center use is a retail use, particularly since its use will be limited to residents of the building.

If the fitness center space is subtracted from the space devoted to retail uses on the ground floor, the total amount of retail space is 1,440 square feet less than is depicted in the plans. As a result, the space devoted to retail uses, does not conform with the plans approved by the Commission, as required by 11 DCMR § 2409.2. Likewise, the amount of retail space is not approximately the same as the depicted in the plans contained in Exhibit 69A, as required by Condition 5 the PUD Order.

The Commission also disagrees with your conclusion that the added spaces is within the two percent margin authorized by 11 DCMR §2409.6. The 1,440 square feet of space devoted to the fitness center represents 9.8 percent of the total square feet devoted to retail uses ($1,440/14,760 = .098$ or 9.8%) which exceeds the 2% flexibility authorized by 11 DCMR §2409.6.

Therefore, the Zoning Administrator does not have the authority to approve a building permit application for the fitness center modification described in your letter. The Commission believes that if the Applicant wishes to proceed with this modification, it should present it to the Commission pursuant to 11 DCMR § 2409.9³.

Sincerely,



Sharon S. Schellin
Secretary, District of Columbia Zoning Commission

Cc: Cynthia A. Giordano, Esq.
Melinda Bolling, Esq., DCRA General Counsel

³ 2409.9 Any modifications proposed to an approved PUD that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Commission. The proposed modification shall meet the requirements for and be processed as a second- stage application, except for minor modifications and technical corrections as provided for in § 3030.