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MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: Jennifer Steingasser, Deputy Director
DATE: September 1, 2011
SUBJECT: PUD Extension Request – Zoning Commission Application No. 08-27 & 08-27A

Applicant	American Institute of Architects
Address	1735 & 1799 New York Avenue N.W. (Square 170, Lots 38 and 39)
Ward / ANC	2/2A
Project Summary	Renovation and rehabilitation of an existing office building and plaza, with the addition of ground floor retail and multi-purpose uses.
Effective Date of Order	July 17, 2009
Previous Extension	None
Expiration Date of Order	July 17, 2011

PHOTOGRAPHS OF SITE:

2009



2011 (Google Maps)

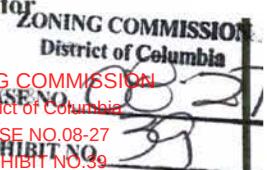
EVALUATION OF THE EXTENSION REQUEST

Section 2408.10 allows for the extension of a PUD for “good cause” shown upon the filing of a written request by the Applicant before the expiration of the approval; provided that the Zoning Commission (hereinafter, the “Commission”) determines that the following requirements are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond.

The application indicates that the request was served on all parties to the application on July 13, 2011.

- (b) There is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the PUD that would undermine the Commission’s justification for approving the original PUD.



Pursuant to ZC Order No. 08-27, the Commission approved an application to renovate an existing office building and plaza. Among the project features, the building's ground floor would be enhanced with a new multi-purpose room and a bookstore accessible directly from the plaza, and roof level improvements would incorporate sustainable design features. The Commission adopted the requested PUD-related map amendment from SP-2 to C-3-C to facilitate the proposal. A subsequent order, ZC Order No. 08-27A, approved a technical correction to the original order.

After the issuance of the ZC Order Nos. 08-27 and 08-27A, the Commission adopted an amendment which provided more permissive rules governing retail uses in certain SP-2 zones.¹ The new § 518, had it been approved prior to the subject PUD, would have allowed the Applicant to pursue the location, accessibility, visibility, and use for the proposed ground floor bookstore through special exception analysis rather than the more stringent variance standard. However, the project also required several other areas of relief unrelated to § 518. The proposal needed relief for roof structures, including additions to non-conforming roof structures (§ 2001.3), the single roof structure requirement (§ 411), and the roof structure set back and height limitation requirement (§ 411 and 770.6). The project's multi-purpose room, which would be leased to outside groups and organizations for events, required use variance relief.²

As part of ZC Order No. 08-27, the Commission reasoned that the project and its associated relief must be examined comprehensively and that the PUD and related map amendment process was the best way to accommodate the proposal. The Commission stated that:

“the PUD and related map amendment process is the best means to accomplish the modifications proposed by the Applicant. In order to accomplish the proposed modifications through the BZA process, the Applicant would have to seek multiple variances and special exception relief. The Commission finds this process inappropriate and unnecessary. The Commission does not agree with the ANC and WECA that variance relief from the BZA would be the proper course of action for the Applicant's proposed modifications. The requested areas of relief from the Zoning Regulations can best be assessed and granted through the PUD process, which allows the Commission to consider the requested relief collectively, as opposed to piecemeal variances and special exceptions required by the BZA.”³

The Commission also highlighted how the proposed multi-purpose room would not be appropriate for Board of Zoning Adjustment review. The Commission provided that “the Applicant would be required to seek a use variance for the proposed use of the multi-purpose room. The Applicant likely would be unable to meet the stringent criteria for a use variance, so this proposed multi-purpose room use would not be possible without the requested PUD-related map amendment.”⁴

Even with the later adoption of § 518, the Commission's reasoning that the PUD and related map amendment process was the preferable route for the multiple special exception and variance requests remains applicable. As such, there have been no substantial changes to any of the material facts upon which the Zoning Commission based its original approvals (08-27 & 8-27A), including the Zoning Regulations and the Comprehensive Plan.

¹ See ZC Order No. 09-11 (2010). More specifically, see § 518.

² The Applicant indicates that the proposed multi-purpose use would most likely be deemed an assembly hall, auditorium, or public hall, which are first permitted in the C-2 zones and are not permitted in SP-2 zones even after the adoption of § 518.

³ See ZC Order No. 09-11, pages 12-13.

⁴ Id.

(c) The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in § 2408.11.

Section 2408.11 sets out the conditions of good cause as:

- (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, circumstance or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

The Applicant has been unable to obtain sufficient project funding for the proposed building as a result of the continuing credit crisis, which is beyond the Applicant's reasonable control. Therefore, there is substantial evidence that there is good cause for the requested extension.

JS/pg

Case Manager: Paul Goldstein