GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: District of Columbia Zoning Commission

FROM: Ellen McCarthy, Director

DATE: November 8, 2005

SUBJECT: Zoning Commission Case No. 01-28TE

- Time Extension for, and Major Modification to, an Approved Consolidated PUD and Map Amendment – 200 K Street, N.E.
- Office of Planning Report on Supplemental Information Requested by Zoning Commission Regarding 11DCMR § 2408.10, § 2408.11, and Other Matters

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I. OFFICE OF PLANNING SUMMARY RECOMMENDATION

A. Extension Request

The Office of Planning (OP) is unable to evaluate whether the applicant has demonstrated with substantial evidence that there is good cause for the requested extension.

The applicant sent a memorandum to OP on November 1, 2005 stating that the applicant *will* demonstrate that there is good cause, by providing substantial evidence of the applicant's inability to obtain project financing, despite diligent good faith efforts, because of economic and market changes beyond the applicant's reasonable control (§2408.11 (a). This OP report is due to the Zoning Commission the same day the applicant intends to provide this information to the Zoning Commission and to OP. Therefore OP is unable to evaluate in this report whether the applicant has met §2408.10(c)'s requirement to demonstrate with substantial evidence that there is good cause for granting an extension under one or more of the criteria specified in § 2408.11.

B PUD Modification Request

In a report dated September 23, 2005, OP recommended the Commission approve the modified design, subject to the provision of information noted in Section V of that report, and subject to the Conditions noted in Section VIII of that report. Those recommendations remain the same.

ZONING COMMISSION
District of Columbia
CASE NO. 01-28TE
EXHIBIT NO. 89

ZONING COMMISSION
District of Columbia
CASE NO.01-28
EXHIBIT NO.89

II. SUMMARY OF APPLICATION STATUS

The applicant, 200 K Street Limited Partnership, has filed for an extension and major modification to an approved PUD in Square 749 in Northeast Washington. The modifications include:

- A request to divide the PUD into a Consolidated PUD and a Preliminary PUD;
- A request to build two residential buildings with retail space, rather than 1 residential building and 1 office building with retail space;
- A proffer to dedicate over 10% of the PUD's total gross residential floor space in the two buildings to housing that is affordable to households making no more than 80% of the Area Median Income (AMI).

In a report dated September 23, 2005 the Office of Planning (OP) recommended the Zoning Commission approve the modified design, subject to certain conditions and to the provision of additional information.

Advisory Commission 6C requested that the hearing be delayed in order to give the full ANC time to review the revised plans that had been presented to the Zoning Commission on September 29, 2005. The Zoning Commission agreed to reschedule the hearing. The Commission also stressed that the applicant must demonstrate how the application addresses both Sections 2408.10 and 2408.10 of the Zoning Regulations.

The applicant must first demonstrate "good cause" for an extension. If the Commission decides the applicant has demonstrated good cause, the Commission will then consider any modifications under Section 2409.9.

III. HAS THE APPLICANT DEMONSTRATED GOOD CAUSE FOR THE EXTENSION?

A. Criteria

Section 2408.10 permits the Commission to extend the validity of PUD approvals:

> *...for good cause shown upon the filing of a written request by the applicant before the expiration of the [PUD] approval, provided 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:*
> *(b) There is no substantial change in any of the material facts upon which the Commission based its original PUD approval that would undermine the Commission's justification for approving the original PUD; and*
> *(c) The applicant demonstrates with substantial evidence that there is good cause for such extensions, as provided in § 2408.11.*

Section 2408.11 provides the criteria for §2408.10(c).

For the purposes of §2408.11(c) the Commission may grant an extension of the validity of a PUD 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, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order.

B. Evaluation

1. ***§ 2408.10 (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 record demonstrates that the applicant has served the extension request on all parties and that they have been given at least thirty days to respond.

2. ***§2408.10 (b) There is no substantial change in any of the material facts upon which the Commission based its original PUD approval that would undermine the Commission's justification for approving the original PUD.***

OP believes there have been several substantial changes to material facts, but none of these changes should undermine the reasons for originally approving the PUD. Some of the material facts on which the Commission based its decision included specific aspects of use, design and amenities. To the extent they were considered by the Commission, OP has included them in its consideration of changes to material facts, if the applicant has proposed changes to use, design or amenities. OP's September 23, 2005 report to the Commission has already considered most of these proposed changes from the standpoint of their being Major Modifications to the PUD.

i. Finding of Fact 1: *Changes to Underlying Zoning, Independent of PUD.* When the PUD was originally approved, the underlying zoning was M and C-M-1. No residential development was permitted, which is one reason the applicant sought a PUD. Independent of this PUD, Zoning Commission Order No. 821 rezoned the site to C-M-3 and C-2-B. Up to 3.5 FAR of residential development is now permitted as a matter of right on the portion of the applicant's site nearest 3rd Street. OP believes this change in the material fact of underlying zoning actually supports the Commission's reasons for approving the original PUD – to permit residential development.

ii. Finding of Fact 1: *Change from Consolidated PUD to Consolidated and Preliminary PUD:* The Commission originally approved a complete Consolidated PUD. Because of the proposed modifications the applicant has made to the project plans since the last extension, OP recommended that the applicant separate the project into a consolidated and a preliminary PUD. OP believes this will not undermine the Commission's justification for approving the original PUD. It will give the Commission greater opportunity to review the design details of the second phase of the project within the physical context of what exists at that time, in a neighborhood undergoing rapid change.

iii. Findings of Fact 3, 5, 12, 14 and 36: *Elimination of Office Use:* The original PUD was to be a "high-rise, mixed use office and residential project" (No. 3). The modification now proposes a primarily residential project, with some local-serving retail. OP believes this is a substantial change of material facts but one that that does not undermine the Commission's reasons for approving the original PUD.

The approved PUD was consistent with the Comprehensive Plan and the "goals and objectives of the plan relative to the provision of a medium-high density commercial project on the site [that] could provide an economic stimulus for the area, acting as a catalyst for future commercial development to the immediate north and east of the site" (No. 36).

Finding of Fact 36 further stated that "The Commission also believes the proposed 130 residential units would add to the housing stock in the area and help buffer the existing residential neighborhood from the proposed commercial development."

Before the PUD was originally approved, no new residential development was permitted on the PUD's site because of the industrial zoning. The Commission's approval of new zoning associated with the PUD (not the rezoning separately approved in Order No. 783) first permitted new residential use. Since then, the trend towards this area becoming a desirable residential neighborhood has increased dramatically, with approximately 800 units of housing being in construction or pre-construction phases within two blocks of the site. Given these trends, and given the proposed elimination of the office component, that there will no longer be a need to "buffer the existing residential neighborhood from the proposed commercial development."

iv. Findings of Fact Nos. 4, 5, 12 and 16; Other Changed Material Facts: *Changes to the Housing Proposal:* The original PUD was to have had approximately 230 residences. The revised PUD would contain approximately 700 residences rather than 615,546 square feet of office space. In OP's view this is a substantial change in the material facts. Since 1995 there have been other relevant changes in material facts. (a) The Rivlin Commission has documented the positive relationship between increasing the number of District residents and improving the fiscal health of the city. Accordingly, the mayor has established growth of housing units and population as a top priority for the District. (b) The New York Avenue Metro station has been constructed and opened. (c) The area between the CSX tracks and North Capitol Street has continued to develop slowly as a general office area. (d) Over the last five years a strong market for housing has

developed where none existed before, east of the CSX tracks in the vicinity of H Street, NE and the New York Avenue Metro. In this context, OP does not believe it would undermine the Zoning Commission's conditions for originally approving the PUD if the applicant built more housing on the site, rather than having the land revert to its underlying zoning. The underlying zoning for the western three-fifths of the site is presently C-M-3, which does not permit housing.

v. Findings of Fact No 16 and Condition No. 14: *Changes to Amenities and Community Benefits Package*: Among the original PUD's amenities there was to be 60,000 square feet of retail and institutional space that was to have included a job training center, a day care center, and space for a 40,000 square foot grocery store. The job training center and the space for the grocery store have been eliminated. The changes are substantial, but, in OP's opinion would not undermine the Commission's reasons for supporting the original PUD. These were both amenities designed to support pressing public needs. With respect to the job training center, since 1995, the District's economy has improved, unemployment has decreased, and the District has developed additional opportunities for vocational training at the nearby, re-opened McKinley Tech High School. With respect to the grocery store, the H Street plan and zoning overlay stresses H Street, NE as the primary retail area, and there is currently a strong possibility that a significant new grocery store will be included in one of two mixed use developments within two blocks of the applicant's PUD. OP believes that the elimination of these amenities and the substitution of other amenities more in keeping with current needs (e.g., the reservation of approximately 87,000 square feet of evenly-distributed residential space affordable to households earning up to 80% of the Area Median Income) will not undermine the Commission's reasons for supporting the original PUD.

The project will still provide 21,000 square feet of neighborhood serving retail, and a day care center.

vi. Various Findings of Fact and Approval Conditions: *Changes to Site Plan and Design*:

The approved PUD had two 130-foot buildings oriented north-south. They flanked a central plaza entered primarily off of K Street, with secondary entrances from 2nd Street and L Street. The western building (office), was uniformly 130 feet and 12 stories for the entire length of 2nd Street. The eastern building (residential) stepped down from 130 at the northern end, to 87.5 feet for most of the block, and to 36.7 feet for a depth of approximately one structural bay at the corner of 3rd and K Streets, N.E.

The proposed modification still proposes two buildings rising as high as 130 feet, around a central plaza, but with significant differences in the site plan and massing. The western 3/5 of the Square would contain one 130-foot, U-shaped, fifteen-story building (residential) fronting on 2nd Street, K Street and L Street. The principal plaza entrance would be from 2nd Street, under a 12-story glass bridge connecting the wings. Other than three townhouse parcels that have always been outside the PUD boundaries, the eastern 2/5 of the Square would be a residential building that would rise to 90 feet and 10-stories along K Street and the southern portion of 3rd Street, and

would step down to 61'5" (7 stories) for a distance of 71 feet along 3rd Street, adjacent to the outlying townhouses on the northeast corner of the Square.

OP believes that while these changes from the material facts of the originally approved PUD are substantial, the general physical parameters of the project's site plan remain the same: two buildings of up-to 130 feet oriented around a plaza, and with one building stepped down to respect nearby residential uses. In OP's opinion, the changes do not undermine the Commission's justification for approving the original PUD as stated in Conclusions of Law No. 2: *The development of this PUD...will offer a variety of buildings types with more attractive and efficient overall planning and design not achievable under matter of right development*[1].

3. ***§2408.10 (c): The applicant demonstrates with substantial evidence that there is good cause for such extensions, as provided in § 2408.11.***

In a memorandum sent by the applicant to OP on November 1, 2005 the applicant states that it will demonstrate with substantial evidence that there is good cause for the extension based on Section 2408.11(a), an inability to obtain project financing despite diligent good faith efforts because of economic and market changes beyond the applicant's reasonable control.

OP is unable to evaluate whether the applicant meets these criteria. At the time of this report the applicant had sent to OP only a memorandum stating the applicant's intention to provide, by November 8:

- A detailed description of the applicant's "diligent good faith efforts to obtain financing" in the 71 months since the Zoning Commission last approved a time extension for the PUD in Order No. 7830B dated December, 1999, and;

- Economic analysis from Basile Baumann Prost Associates (BBPA) of the District's real estate market over the last six years, with particular emphasis on when the current, strong market began, the different markets that exist west of North Capitol Street and east of North Capitol Street, and when the positive economic impact of the New York Avenue Metro station began.

The applicant has also stated that at the November 17 hearing additional information will be made available through BBPA's testimony.

However, because this OP report is due to the Zoning Commission the same day the applicant intends to provide the above-noted information to the Zoning Commission, OP is unable to evaluate in this

[1] In OP's opinion, the new design contains several improvements over the approved PUD. The lower floors now have townhouse-like facades and entries at the base to respect the scale of the nearby buildings and to inject more life onto the street. The retail locations are more "street" oriented than the approved design, especially nearest the Metro, and at the corner of 3rd and K Streets. The K Street façade would present a clearer frame to the 147-foot wide street, rather than bleeding off into the previously approved, but ill-defined plaza. The Consolidated PUD's heights of 90 and 61 feet along the west side of 3rd Street would provide a transition between the Preliminary PUD's 130 foot height along 2nd Street, and the scale of existing row houses and proposed new development on the east side of 3rd Street. New development on the east side of 3rd Street is likely to be 65' high.

report whether the applicant has demonstrated the requirements of §2408.10(a), with substantial evidence of have met one or more of the criteria in §2408.11.

IV. RECENT COMMUNITY INPUT

The applicant presented the revised plans to ANC 6C's zoning committee on November 2, 2005. The committee voted to support the time extension and the PUD revisions. A full ANC review was scheduled for November 9, 2005.

V. RECENT GOVERTMENT RESPONSES

The District Department of Transportation is now on record as supporting the project, provided additional provisions are made for "Flex-Car".

The District Department of Housing and Community Development has recently reiterated its support the project.

VI. OP IDENTIFICATION OF OTHER ISSUES AND MATTERS

OP's September 23, 2005 memorandum to the Commission listed several remaining issues, in Section V of that report. OP incorporates these by reference into this report. OP believes that the applicant has addressed many of these issues since September 23 and will address others at the November 17, 2005 hearing. OP will make note of this in its own testimony at the Zoning Commission hearing on November 17.

The recommendations on the proposed modification, which are in Section VII of OP's September 23 report, remain the same.

Emc/slc