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5:47 PM

ZONING COMMISSION
District of Columbia
CASE NO. 02-38F
EXHIBIT NO. 07

ZONING COMMISSION
District of Columbia
CASE NO. 02-38F
EXHIBIT NO. 7

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 02-38F
Z.C. CASE NO. 02-38F**

**District of Columbia Office of the Deputy Mayor for Planning and Economic
Development
(Time Extension for First-Stage PUD for Northeast Building @
Square 542, Record Lot 89)
March 30, 2015**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on March 31, 2015. At the meeting, the Commission approved a request from the District of Columbia Office of the Deputy Mayor for Planning and Economic Development ("DMPED") for a time extension for an approved first-stage planned unit development ("PUD") for property consisting of Record Lot 89¹ in Square 542 ("Property"), pursuant to Chapters 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

FINDINGS OF FACT

1. By Z.C. Order No. 02-38A, the Commission approved a modification to a first-stage PUD ("First-Stage PUD"), a second-stage PUD ("Second-Stage PUD"), and a Zoning Map amendment for the Property. The First-Stage PUD provides for the development of eight buildings including residential, office, and ground-floor retail uses and includes significant open spaces, as well as the re-opening of the 4th Street right-of-way. The Second-Stage PUD includes the four buildings through the center of the Property and their adjacent open spaces. These buildings include the East and West 4th Street Office Buildings with ground-floor retail space, including a Safeway grocery store flanking the east and west side of 4th Street, S.W. and the East and West Residential Towers, which have a continuous open space connecting them to 4th Street, S.W. Z.C. Order No. 02-38A became effective upon its publication in the *D.C. Register* on January 25, 2008.
2. Under Condition No. 28 of Z.C. Order No. 02-38A, the Second-Stage PUD is approved for a period of two years from the effective date of the order. Per the order, the Applicant is required to file for a building permit within

¹ Record Lot 89 in Square 542 has been divided into Lots 822–834 for assessment and taxation purposes

that time, as specified in 11 DCMR § 2409.1. Construction must begin within three years of the effective date of the order.

3. Condition No. 29 of Z.C. Order No. 02-38A provides that the approval for the First-Stage PUD is valid for a period of five years from the effective date of the order. Accordingly, Z.C. Order No. 02-38A requires the Second-Stage PUD applications for the Northwest Building, the Northeast Building, and the West M Street Building to be filed by January 25, 2013. Per the order, these second-stage applications may be submitted individually, at the same time, or in any combination thereof.
4. The timeframe for filing the Second-Stage PUD application for the East M Street Building is separate and is based upon the date that Safeway vacated the premises, which was April 15, 2010. Accordingly, the Second-Stage PUD application for the East M Street Office Building must be filed by April 15, 2015.
5. Building permits for the East and West 4th Street Office Buildings were issued on or around July 17, 2008. Construction commenced in September 2008.
6. By Z.C. Order No. 02-38B, the Commission approved a two-year extension of the Second-Stage PUD with respect to the East and West Residential Buildings. That order requires that a building permit be filed no later than January 25, 2012, and that construction commence by January 25, 2013. The developer of those buildings filed building permits for both the East and West Residential Buildings in advance of January 25, 2012. Construction has commenced on both the East and West Residential Buildings.
7. By Z.C. Order No. 02-38C, the Commission approved a two-year and three-month extension of the First-Stage PUD with respect to the West M Street Office Building and the Northeast Building. That order required that Second-Stage PUD applications be filed by April 15, 2015. The applications may be submitted individually or at the same time.
8. On February 20, 2015, DMPED filed a Request for an Extension of Time for an additional two years for the First-Stage PUD approval for the Northeast

Building. The request, if approved, would require a Second-Stage PUD for the Northeast Building to be filed no later than April 15, 2017.

9. DMPED submitted evidence that delays beyond its reasonable control have prevented the development from meeting the April 15, 2015, deadline. Specifically, DMPED has spent much of the past two years working with other District agencies and the community to create a development concept that would integrate the Southwest Neighborhood Library (“SWN Library”) into the Northeast Building. DMPED, DC Public Library, and the Office of Planning (“OP”) held a number of meetings with Advisory Neighborhood Commission (“ANC”) 6D and the community in order to explore the option of moving the library to 4th Street. Additionally, DC Public Library commissioned architectural studies of how to integrate the SWN Library into the Northeast Building. These studies were presented at multiple community events to receive public feedback. However, a majority of community members were committed to a stand-alone library branch on its current site. As a result, DMPED decided to move forward with a solicitation for the development of the Northeast Building based on the approved PUD Order. Still, the extended consideration given to integrating the SWN Library into the Northeast Building prevented DMPED from soliciting a development partner and timely submitting a Second-Stage PUD application.
10. DMPED also emphasized the constraints to which it is subject when moving forward with a development. As a government agency, DMPED has a development process that is much longer than that of a typical private developer due to the need to ensure transparency, fairness, and community participation, as well as compliance with District law. To select a development partner, DMPED issues a request for proposals and allows up to 90 days for responses, after which the selection committee may ask for additional information from prospective partners and may create a short list of candidates to submit a Best and Final Offer. The selection committee may then have these short-listed developers present proposals to the community, after which the committee weighs this information and community feedback in making a final decision. DMPED then awards an exclusive right to negotiate and it begins negotiation with the chosen developer regarding the remaining terms of the disposition of the site. Once a Land Disposition and Development Agreement is drafted for the

partnership, that agreement is submitted to the Council for approval, along with an economic analysis and proof of community engagement, in addition to meeting numerous other statutory requirements. Only upon the Council's approval of the agreement, which may take up to 90 days, can DMPED and its development partner file the Second-Stage PUD application.

11. Due to the extended nature of the selection process, in combination with the delays related to the initially proposed integration of the Southwest Neighborhood Library, DMPED is unable to meet the April 15, 2015, deadline for filing the Second-Stage PUD application.
12. On February 20, 2015, DMPED served a copy of the Request for an Extension of Time on all parties, including ANC 6D, Tiber Island Cooperative Homes, Inc., and the Carrollsburg Square Condominium Association.
13. On February 27, 2015, the OP submitted a report supporting the requested time extension.
14. On March 16, 2015, ANC 6D submitted a letter in support of the requested time extension. The letter stated that, at its March 9, 2015, public meeting, the ANC urged DMPED to service the site during the two-year extension period, including conducting routine landscaping and adding park benches.
15. At a public meeting on March 30, 2015, the Commission considered the request.

CONCLUSIONS OF LAW

1. Subsection 2407.10 of the Zoning Regulations authorizes the Zoning Commission to extend the time period of a first-stage PUD. Subsection 2407.11 requires that any request to extend that time period must be "accordance with the standard and process for second-stage PUD extensions set forth in § 2408.10 through 2408.12."
2. Those provisions authorize the Commission to extend the validity of a final PUD order for good cause shown upon a request made before the expiration of the approval, provided: (a) the applicant serves the request on all parties

to the application and allows them 30 days to respond; (b) there is no substantial change in any material fact 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) the applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in § 2408.11. (11 DCMR § 2408.10.) Under § 2408.11(b), the applicant may show good cause by demonstrating 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.

3. In this case, DMPED has complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the requests and allowing them 30 days to respond.
4. Further, there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.
5. DMPED has presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(b). Specifically, DMPED demonstrated that development of the Northeast Building has been delayed by (1) the initial proposal to integrate the SWN Library into the development, which was ultimately abandoned, and (2) the lengthy approval process DMPED must undergo in choosing a development partner and finalizing a Land Disposition and Development Agreement for the project.
6. 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 the Commission determines that the parties to the PUD have raised a material factual conflict concerning the criteria set forth in § 2408.11. In this case, the parties have raised no such factual conflicts and, thus, a hearing is not necessary for this request.
7. This decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

8. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)), requires the Commission to give great weight to the issues and concerns that the affected ANC raises in its written recommendation. In its March 16, 2015, letter, ANC 6D indicated support for the time extension and requested that DMPED service the site during the two-year extension period, including conducting routine landscaping and adding park benches. The Commission has considered the ANC's request and concludes that it does not have the authority to impose conditions on a time extension that would ordinarily require a modification to the original PUD approval. As the agency with jurisdiction over the site, DMPED already has an obligation to maintain it and the Commission expects DMPED to do so.
9. Section 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04), requires the Commission to give great weight to OP's recommendations. OP's report indicates that DMPED has met the requisite standards for a PUD extension and, therefore, OP recommended approval of the requested extension. The Commission has considered OP's recommendation and given it great weight in approving this request.

DECISION

In consideration of the Findings of Fact and Conclusions of Law above, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the request for a two-year time extension for the First-Stage PUD approval of the Northeast Building approved in Zoning Commission Case No. 02-38A. The First-Stage PUD for this building shall be valid until April 15, 2017, within which time a Second-Stage PUD application shall be filed.

On March 30, 2015, upon the motion made by Vice Chairperson Cohen, as seconded by Commissioner Miller, the Zoning Commission adopted this order by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, 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 May 1, 2015.