

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



MEMORANDUM

TO: District of Columbia Zoning Commission

FROM: Jennifer Steingasser, Deputy Director *JS*

DATE: November 23, 2007

SUBJECT: Zoning Commission Case No. 03-27A - Request for Extension of Time for an Approved Consolidated PUD – 4600 Wisconsin Avenue, N.W., filed by Pillsbury Winthrop Shaw Pittman LLP for Clemens 4600 Partners, LLC.

APPLICATION

On November 9, 2007 the applicant, the Clemens 4600 Partners, LLC, filed a timely request for an extension of Zoning Commission Order Number 03-27, pursuant to § 2408.10 of the Zoning Regulations. This Zoning Commission order relates to an approved consolidated PUD for a mixed use residential and commercial building. The originally approved PUD has not been constructed and permits have not been issued.

Section 2408.8 states that “[t]he final PUD approved by the Commission shall be valid for a period of two (2) years, within which time application shall be filed for a building permit, as specified in § 2409.1.” Section 2408.9 states that “[c]onstruction shall start within three (3) years of the date of final approval.” The application requests to extend the time period for two years to November 18, 2009 for the filing of the building permit and November 10, 2010 for construction to begin.

SUMMARY RECOMMENDATION

The Office of Planning recommends the Zoning Commission approve the extension for two years, as requested by the applicant.

PROPERTY DESCRIPTION

The subject property consists of Square 1732, Lots 817 and 820 and is located within the C-2-A Zone District. No PUD related map amendment was associated with this approval. The site fronts on Wisconsin Avenue and Brandywine Street, N.W. and is improved with vacant one and two-story commercial buildings.

ZONING COMMISSION
District of Columbia

CASE NO. 03-27A

EXHIBIT NO. 4

HISTORY

November 18, 2005: The Zoning Commission approved **Order No. 03-27** for a consolidated PUD for a 12,661 square foot site within Square 1732, Lots 817 and 820, subject to 13 conditions and consisting of:

- 5 stories and 65 feet in height;
- FAR of approximately 3.0;
- 36,333 square feet of residential gross floor area consisting of 42 residential units, including one affordable unit;
- 1,650 square feet of retail gross floor area;
- Lot occupancy of 65 percent; and
- 49 garage parking spaces.

November 9, 2007: Clemens 4600 Partners, LLC files the subject application requesting a two year extension on the approved consolidated PUD.

ANALYSIS

The Commission is empowered to grant time extensions for validly approved PUDs pursuant to § 2408.10 of the Zoning Regulations, as stated below.

“The Commission may extend the time periods set forth in §§ 2408.8 and 2408.9 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; provided, that the Commission determines that the following requirements are met:

(a) The extension request is served on all parties to the application by the applicant;

The application indicates that this provision has been complied with.

(b) There is no substantial change in any of the 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

The only change in material facts has been the adoption of the 2006 Comprehensive Plan since the original PUD was approved. The Future Land Use Map of the 2006 Comprehensive Plan recommends mixed use for the subject property, a combination of medium density residential (4-7 story apartment buildings) and moderate density commercial (buildings generally not exceeding 5 stories in height), consistent with the proposed 5-story building. This is also the same land use designation that was recommended by the Generalized Land Use

Map of the previous Comprehensive Plan. Therefore, there are no material facts that would undermine the Commission's justification for approving the original PUD.

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

Section 2408.11 states, "*For purposes of § 2408.10(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."*

The application indicates that additional time is needed to obtain project financing as a result of changes in the residential condominium market, the prediction that housing values will continue to decline and the increase in the lack of willingness on the part of lenders to finance speculative condominium projects. The applicant initially pre-sold some of the residential units; however those deals were withdrawn when the condominium market softened, contributing to the applicant's difficulty in obtaining financing. Conversion of the building to rental apartments is an option, but in this case the application indicates that the building does not have sufficient density to be financed as such.

Condition No. 10 of the PUD approval, Z.C. Case No. 03-27, requires that no building permits be issued until the applicant has recorded a covenant in the Land Records of the District of Columbia that is satisfactory to the Office of the Attorney General and to the Department of Consumer and Regulatory Affairs. The covenant is dated September 2007 and has received preliminary approval from those two agencies. The applicant is now awaiting final approval from the Office of the Attorney General and the Department of Consumer and Regulatory Affairs on the covenant.

Zoning Commission Case No. 03-27A
Request for Time Extension
4600 Wisconsin Avenue, N.W.
November 23, 2007
Page 4 of 4

Based on the above, the Office of Planning concludes that the request for a time extension is in conformance with the provisions of § 2408.10 of the Zoning Regulations.

COMMUNITY COMMENTS

ANC 3E did not respond to a request for comments from the Office of Planning.

RECOMMENDATION

The Office of Planning concludes that the subject application is in conformance with the provisions of § 2408.10. Therefore, it is recommended that the Zoning Commission approve the extension for two years, as requested by the applicant.

JS/sjm^{aicp}