

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Office of Zoning

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MEMORANDUM

To: Office of Documents and Administrative Issuance

From: Sharon S Schellin 
Secretary to the Zoning Commission

Date: June 25, 2008

Re: Publication for the Office of Zoning

Please publish the following in the *D C Register* on July 4, 2008:

1. Z.C. Order No. 05-03A (Case No. 05-03A).

Attachment

ZONING COMMISSION
District of Columbia

CASE NO.

05-03A

EXHIBIT NO.

8

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 05-03A
Z.C. CASE NO. 05-03A
Time Extension
Consolidated Planned Unit Development and Map Amendment
Anacostia Gateway Government Center
September 10, 2007

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on September 10, 2007. At the meeting, the Commission approved a request from the District of Columbia Office of Property Management (the "Applicant") for a time extension for an approved planned unit development and related zoning map amendment for property located at 1800 Block Martin Luther King, Jr. Avenue, S.E (Parcel 224/31, Square 5600, Lot 17; and Square 5601, Lots 54, 858, 859, 860, and part of 857) (collectively, the "Property") pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations. The Commission determined that the request was properly before it under the provisions of § 2408.10 of the Zoning Regulations and that an extension of time of the validity of the PUD is in the best interest of the District of Columbia and consistent with the intent and purposes of the Zone Plan.

FINDINGS OF FACT

1. By Order No. 05-03, effective August 19, 2005, the Commission approved a consolidated planned unit development and related map amendment (from C-M-1, C-3-A, and R-3 to C-3-A) to allow construction on the Property of an office building having a total gross floor area of approximately 335,270 square feet, building density of 2.93 FAR, and maximum building height of 80 feet. The District of Columbia Department of Transportation ("DDOT") is intended to be the primary occupant of the building, along with other retail and service uses.
2. On July 27, 2007, prior to the expiration of the PUD, the Applicant filed a request to extend the validity of the PUD approval for a period of two years, such that an application must be filed for a building permit no later than August 19, 2009 and construction must start no later than August 19, 2010. The request indicated three bases for extension of the validity of the PUD, based upon conditions outside the Applicant's reasonable control: (1) difficulties with property assemblage; (2) delays in selection of a project developer; and (3) changes in administrative leadership.

- (a) With respect to property assemblage, the Applicant stated it used its eminent domain powers to take control of one parcel, which was previously occupied by a gasoline service station. As a result, the Applicant was required to assume significant unanticipated environmental remediation responsibilities. The Applicant removed the underground storage tanks from the site, and is establishing a regular monitoring protocol for the Property. These responsibilities required extensive attention and resources from the Applicant, which in turn led to re-study and delays in the implementation of the Project.
 - (b) As to developer selection, the Applicant stated that this project was one of the first public projects in the District awarded through a newly implemented two-stage developer selection process involving a Request for Qualifications followed by a Request for Proposals from those developers qualified in the first round of reviews. This two-stage review process has not been widely implemented by the District government, requiring significant internal legal and contractual review prior to its implementation. This internal review included such matters as revisions needed to base building performance standards and specifications to ensure the adequacy of the Request for Proposal review.
 - (c) Finally, the Applicant indicated that the inauguration of a new District Mayor resulted in the appointment of a new Office of Property Management ("OPM") Director and other personnel changes. The new OPM leadership desired input into the implementation of the new two-step developer selection process.
3. ANC 8A, the ANC in which the Property is located, was automatically a party in the case. There were no other parties. The Applicant served a copy of the extension request on ANC 8A. ANC 8A had at least thirty (30) days to respond to the Application. No response was received.
4. Zoning Commission Order No. 05-03 expired on August 19, 2007.
5. On September 10, 2007, at a properly noticed special public meeting, the Commission reviewed and approved the two-year time extension.

CONCLUSIONS OF LAW

The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided. (a) the request is served on all parties and all parties are allowed thirty (30) days to respond; (b) there is no substantial change in any 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 (c) substantial evidence there is good cause for the extension based on the criteria established in § 2408 11 (11 DCMR

§ 2408.10.) The three criteria are: (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 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. (11 DCMR § 2408 11.)

The Commission concludes the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(c) because of the existence of factors beyond the Applicant's reasonable control which renders the Applicant unable to comply with the time limits of the PUD order. The Commission concludes the difficulties with property assemblage and related environmental remediation, the delays in developer selection, and changes in administrative leadership justify the extension.

The Commission concludes the Application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the Application and allowing them thirty (30) days to respond

Section 2408.12 of the Zoning Regulations provides that the Commission shall hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11. The Commission concludes that there is no material factual conflict in issue and that consideration of the request for extension is appropriate without need for a public hearing.

The Commission further concludes there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.

The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

The approval of the time extension is not inconsistent with the Comprehensive Plan for the National Capital. District Elements ("Comprehensive Plan"), adopted through the Comprehensive Plan Amendment Act of 2006, effective March 8, 2007 (D.C. Law 16-300).

DECISION

In consideration of the reasons set forth in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS** that the validity of Zoning Commission Order No. 05-03 be

extended for a period of two years, that is, until August 19, 2009, within which time application for a building permit shall be filed. Construction shall start not later than August 19, 2010.

The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401 01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order

For the reasons stated above, the Commission concludes that the Applicant has met the burden, it is hereby **ORDERED** that the request be **GRANTED**.

The Zoning Commission **APPROVED** this application at its public meeting on September 10, 2007, by a vote of 5-0-0 (Anthony J. Hood, John G. Parsons, Carol J. Mitten, and Michael G. Turnbull; Gregory N. Jeffries to approve by absentee ballot).

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 JUL 4 2008.