

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance (via-email)
From: Sharon S. Schellin
Secretary to the Zoning Commission
Date: August 24, 2009
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on August 28, 2009:

- ✓ 1. Z.C. Order No. 05-17C/05-324C (Case No. 05-17C/05-32C);
2. Z.C. Order No. 06-29A (Case No. 06-29A);
3. Z.C. Order No. 06-31B (Case No. 06-31B); and
4. Z.C. Order No. 06-43A (Case No. 06-43A).

Attachment

ZONING COMMISSION
District of Columbia
CASE NO. 05/17C/05-324C
EXHIBIT NO. 5

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-17C/05-32C**

Z.C. Case No. 05-17C/05-32C

**(Two-Year PUD Time Extension @ Square 2873, Lot 799 & Square 2875, Lots 1109, 1110)
Broadway Atlantic One LLC, Broadway Atlantic Two LLC, and
Broadway Atlantic Four LLC
July 27, 2009**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on July 27, 2009. At the meeting, the Commission approved the request of Broadway Atlantic One LLC, Broadway Atlantic Two LLC, and Broadway Atlantic Four LLC (the "Applicant") for a time extension of the Consolidated Review and Approval of a Planned Unit Development ("PUD") for Square 2873, Lot 799 and Square 2875, Lots 1109 and 1110; the property being located in the vicinity of the intersection of 9th and V Streets, NW (the "Property"). The request was made pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District Municipal Regulations ("DCMR"). The Commission determined that this request was properly before it under the provisions of § 2408.10 of the Zoning Regulations.

FINDINGS OF FACT

1. By Z.C. Order No. 05-17/05-32, effective June 2, 2006, the Commission approved a PUD for the Property. The approved PUD provided for the development of a mixed-use project consisting of 630-700 residential units and approximately 14,800 square feet of retail space. The Commission conditioned approval upon the provision of a minimum of 29,800 square feet of affordable housing for households with an annual income of at least 80% of the area median income.
2. Z.C. Order No. 05-17/05-32 was corrected by Z.C. Corrected Order No. 05-17B/05-32B, which became effective May 18, 2007. Z.C. Order No. 05-17B/05-32B corrected a typographical error regarding the location of the affordable housing. All other terms of the order remained unchanged.
3. Z.C. Case No. 05-17/05-32 was modified subsequently by Z.C. Order No. 05-17A/05-32A. The Commission modified the initial approval of the PUD to allow an increase in the total number of residential units up to a maximum of 724 and to increase the retail space to approximately 34,550 square feet of space (while retaining flexibility to reduce the amount of retail space by approximately 20,000 square feet). The Commission approved the removal of a parcel of land from the PUD as well as a reduction in the parking ratio. Z.C. Order No. 05-17A/05-32A otherwise incorporated the terms approved in Z.C. Case No. 05-17/05-32.
4. Z.C. Order No. 05-17A/05-32A became effective on June 15, 2007. On June 12, 2009, prior to the expiration of the PUD, the property owner filed a request to extend the validity

of the PUD approval for a period of two years. The request stated, in relevant part, that the extension was necessary because of the dire economic conditions in the real estate market that were outside of the Applicant's control. The Applicant attempted to secure financing for the project on more than one occasion but was unsuccessful due to the frozen credit market. The Applicant further noted that there had been no substantial change of material facts since the Commission's approval of the modification application in 2007.

5. Advisory Neighborhood Commission ("ANC") 1B, the ANC within which the Property is located, was automatically a party in the instant case, as well as the original and subsequent PUD cases. Accordingly, the Applicant served the ANC a copy of the extension request and provided at 30 days for them to respond. No responses were received.
6. At its regularly scheduled public meeting on July 27, 2009, the Commission reviewed and approved the two-year time extension. The Commission found that there was good cause for the extension and that all parties to the PUD case had been served.

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 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 that there is good cause for the extension based on the criteria established in § 2408.11. (11 DCMR § 2408.10.) The three criteria under § 2408.11 are: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's 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 complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.

The Commission 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 the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a).

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.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of Z.C. Case No. 05-17C/05-32C for a two-year time extension of the PUD approval in Z.C. Order No. 05-17/05-32, as corrected by Z.C. Order No. 05-17B/05-32B and modified by Z.C. Order No. 05-17A/05-32A.

The final PUD approved by the Commission shall be valid until June 15, 2011, within which time an application shall be filed for a building permit, as specified in § 2409.1. Construction shall start no later than June 15, 2012.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq. ("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 also prohibited by the Act. In addition, harassment based on any of the above protected categories is also 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 the 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 its burden; it is hereby **ORDERED** that the application be **GRANTED**.

On July 27, 2009, upon a motion made by Chairman Hood, as seconded by Vice Chairman Keating, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull, Peter G. May to adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *DC Register* on August 28, 2009.