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11:36 AM

ZONING COMMISSION
District of Columbia
CASE NO. 05-36K
ZONING COMMISSION
District of Columbia
EXHIBIT NO. 36K
EXHIBIT NO. 6

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION
ZONING COMMISSION ORDER NO. 05-36K
Z.C. Case No. 05-36K
Toll DC II LP
(Minor Modification to an Approved PUD at Square 749, Lots 826 and 827)
July 27, 2015

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on July 27, 2015. At the meeting, the Commission considered an application from Toll DC II LP ("Applicant") for a minor modification to an approved planned unit development and related map amendment. (See Z.C. Order Nos. 05-36 through 05-36J, collectively, the "PUD.") The modification was requested to allow façade treatment refinements to the Phase II portion of the approved PUD. Because the modification was deemed minor, a public hearing on the request was not required pursuant to the Commission's Consent Calendar procedures, 11 DCMR § 3030. The Commission further determined that this modification request was properly before it under the provisions of §§ 2409.9 and 3030 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. 05-36, effective October 10, 2006, the Commission granted first-stage PUD approval and a related Zoning Map amendment to allow for the construction of a two-phased apartment development around an outdoor central plaza. The PUD approval provided for a total of approximately 712 dwelling units with ground-floor retail and other non-residential uses. Phase I contemplated approximately 212 dwelling units, and Phase II was planned to provide approximately 500 units. The two phases were designed to be constructed as a single building for zoning purposes, with above-grade connections located on various upper-level corridors. As part of the original Order, the Commission granted consolidated approval for Phase I of the PUD and first-stage approval for Phase II. Construction of the first phase of the development, located on that portion of Record Lot 67 known for tax and assessment purposes as Tax Lot 828, is complete and is now owned and operated by an entity known as Union Place Phase I, LLC, which a separate entity from the Applicant.
2. By Z.C. Order No. 05-36A, effective November 14, 2008, the Commission granted second-stage approval for Phase II of the PUD, to be located on that portion of Record Lot 67 known for assessment and taxation purposes as Lots 826 and 827.
3. In Z.C. Order Nos. 05-36B and 05-36C, the Commission approved minor modifications to Phase I of the PUD, to restrict access for safety purposes to a small portion of the outdoor plaza to project residents only (Z.C. Order No. 05-36B), and to modify the affordable housing proffer to allow prospective tenants to utilize more than 30% of household expenses for payment of rent in order to accommodate arts professionals (Z.C. Order No. 05-36C).

4. The Commission granted time extensions for Phase II of the PUD in Z.C. Order Nos. 05-36D and 05-36F, such that a building permit application for Phase II would have to be filed by November 14, 2014 and construction commence by November 14, 2015.
5. In Z.C. Order No. 05-36E, the Commission granted the Applicant flexibility to construct Phase II in two sub-phases (Phase II-A and Phase II-B), and modified the PUD's parking requirement.
6. In Z.C. Order No. 05-36G, the Commission granted a modification to include within the PUD approximately 5,300 square feet of additional land area in the northeast corner of Square 749, to permit construction of a freestanding seven-story apartment building consisting of 41 dwelling units.
7. In Z.C. Order No. 05-36H, the Commission granted a minor modification to allow the Phase I building and the Phase II building to be constructed, occupied, and operated as separate buildings on a single record lot.
8. In Z.C. Order No. 05-36I, the Commission granted a modification regarding Phase II only, to allow the Applicant to make certain refinements to the Phase II building's layout, façade treatment, and parking and loading operations.
9. In Z.C. Order No. 05-36J, the Commission granted another time extension for Phase II so that in a building permit application for Phase II-A must be filed by November 14, 2015, and construction must start no later than November 14, 2016. Further, a permit application for Phase II-B must be filed not later than two years following the date of the issuance of a final certificate of occupancy for the residential portion of Phase II-A, with construction to commence within one year thereafter.
10. The present application requests a minor modification to allow the Applicant to make certain minor revisions to the façade treatments of the Phase II building. The revisions include: (i) reducing the four-color brick scheme down to two, with slightly darker tones of red-brown and grey; (ii) enlarging window heights to extend almost all windows up to underside of slab; (iii) adding more glass above the entrance to the passageway from K Street to the central courtyard; (iv) reducing contrast of colors of cast stone window headers and sill and surrounding brick; and (v) reducing cornice profiles.
11. The Applicant's primary goal of the minor façade treatment modifications was to improve the Phase II building's response to the surrounding neighborhood, including the more modern architecture seen elsewhere in the North of Massachusetts Avenue (NoMA) area, the brick of the surrounding townhouses, and the traditional elements of the warehouse/industrial buildings in the area, consistent with comments received from the Commission in 2014 as part of the modification approval in Z.C. Order No. 05-36I.

12. The requested minor modification will have no detrimental impact upon the PUD. Aside from the minor modification to the approved plans for the PUD of revising the colors and certain minor façade treatments, the overall project that was approved has not changed in any fashion. The use, height, density, and gross floor area of the PUD have not changed. The overall design and programming of the PUD has not changed, and the project amenities and community benefits of the project, including the affordable housing commitment, likewise have not changed and will continue to be provided as part of the PUD. This minor modification is solely requested by the Applicant for the reasons referenced in Findings of Fact Nos. 10 and 11.
13. The Office of Zoning referred this matter to the Office of Planning (“OP”) for analysis and recommendation. By memorandum dated July 17, 2015 (Exhibit [Ex.] 5), OP stated its support for the Applicant’s request for a minor modification to the design of the Phase II building.
14. Advisory Neighborhood Commission (“ANC”) 6C, the ANC in which this project is located, submitted a letter in support of the application. The letter noted that at ANC 6C’s duly noticed, regularly scheduled monthly meeting on July 8, 2015, with a quorum of five out of six commissioners and the public present, the ANC voted unanimously 5-0 to support the modification.
15. On July 27, 2015, at its regularly scheduled public meeting, the Commission reviewed the modification request as a Consent Calendar matter and granted approval of the modification. The Commission finds that the approval of the modification is appropriate and not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

CONCLUSIONS OF LAW

Upon consideration of the record in this application, the Commission concludes that the proposed modification is minor and is consistent with the intent of the previously approved PUD. Further, the Commission concludes that approval of the requested modification is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations and Zoning Map. Approval of the modification to the approved PUD is not inconsistent with the District of Columbia Comprehensive Plan (10-A DCMR). Further, the modification does not impact material elements of the PUD, including permitted use, height, gross floor area, or project amenities or benefits.

The Commission is required by § 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) to give great weight to the recommendations of OP. OP recommended approval of this application as a minor modification, and the Commission concurs in this recommendation

The Commission is also required under § 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)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC, which in this case is ANC 6C. In this case, the Commission's find's ANC 6C's support of the modification to offer persuasive advice.

DECISION

In consideration of the Findings of Fact and Conclusions of Law provided herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a modification to the PUD in Square 749, Lots 826 and 827.

Therefore, Condition No. 1 established in Z.C. Order No. 05-36A, granting second-stage approval for the Phase II building, having been amended by Z.C. Order Nos. 05-36E, 05-36F, 05-36H, 05-36I, and 05-36J, is hereby further amended as follows with additional text to the most recent version shown in bold and underlined text:

1. The PUD shall be developed in accordance with the architectural plans and elevations dated June 2, 2008 and marked as Exhibit 38 of the record in Z.C. Case No. 05-36A, as may be modified by the revised floor plans shown in the plans marked as Exhibit C to Exhibit 1 of the record in Z.C. Case No. 05-36H, which plans provide no above-grade building connections between Phase I and Phase II of the PUD, and the plans and elevations dated October 30, 2014 and marked as Exhibit 24 of the record in Case No. 05-36I, as supplemented by the plans and elevations dated December 15, 2014 marked as Exhibit 33 of the record in Z.C. Case No. 05-36I, **and as supplemented by the elevations dated July 9, 2015, marked as Exhibit 2B of the record in Z.C. Case No. 05-36K** (collectively, the "Final Plans") and as modified by the guidelines, conditions, and standards of this Order. The PUD may be constructed pursuant to the phasing plan shown in the plans marked as Exhibit 2 of the record in Z.C. Case No. 05-36E. The Applicant shall have the flexibility to modify the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and bathrooms, provided that the variations do not change the exterior configuration of the building;
 - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed based on availability at the time of construction without reducing the quality of the materials;
 - c. To make minor refinements to exterior details and dimensions including balcony enclosures, belt courses, sills, bases, cornices, railing and trim, or any other

changes to comply with the Construction Codes or that are otherwise necessary to obtain a final building permit;

- d. To modify the design of all landscaping and other streetscape improvements located in public space in order to secure any necessary permits from the District Department of Transportation;
- e. To increase or decrease the overall number of residential units by no more than five percent provided that the percentage of residential gross floor area designated for affordable units shall be no less than 10% of the total gross floor area devoted to residential units and shall be provided consistent with the Commission's approval in Z.C. Corrected Order No 05-36;
- f. To vary the number and location of parking spaces in the underground garage, provided that the total number of parking spaces provided in Phase II is no less than 240 vehicle spaces and 175 bicycle spaces; and
- g. To provide loading facilities within Phase II as provided in the Final Plans, which include one 30-foot-deep loading berth, one 30-foot-deep service delivery space, and one 200-square-foot loading platform.

On July 27, 2015, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, this Order was **APPROVED** and **ADOPTED** by the Zoning Commission at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve and adopt; Marcie I. Cohen, not present, not voting).

In accordance with the provisions of 11 DCMR § 3028.8 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register* on September 18, 2015.