

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-33D
Z.C. Case No. 08-33D
Conference Center Associates I, LLC
(Time Extension – Consolidated Planned Unit Development)
November 9, 2015

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on November 9, 2015. At that meeting, the Commission approved the request of Conference Center Associates I, LLC ("Applicant") for a time extension in which to file a building permit application for the consolidated planned unit development ("PUD"), approved by Z.C. Order Nos. 08-33, 08-33A, 08-33B, and 08-33C, until July 31, 2016. The property (Parcel 121/31) that is the subject of this application is located at the intersection of Irving Street, N E and Michigan Avenue, N E ("Property"). The time extension requests were made pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. Z.C. Case No. 08-33 included both a consolidated PUD approval and a first-stage PUD approval. The consolidated PUD project approved in Z.C. Order No. 08-33, which became final and effective on December 25, 2009, authorized the construction of a hotel, conference center, restaurant, parking structure, and retail space on the eastern half of the Property. The 314-room hotel (which includes a restaurant) and conference center has frontage along Michigan Avenue, N E. and Irving Street, N.E. and a four-story above-grade structure along Michigan Avenue that will include retail uses at grade and in a basement level and 400 parking spaces. A 200-space surface parking lot on the northern portion of the Property was also approved in the consolidated PUD application. Z.C. Order No. 08-33 also authorized the rezoning of the Property from unzoned (designated as GOV) to the C-3-A Zone District.
2. The first-stage PUD approval included two nine-story buildings with a measured building height of 94.5 feet (as measured from the curb at Irving Street) that will be no taller than 90 feet as measured from the finished grade at the building. The two buildings will be dedicated to either additional hotel and/or residential units and may include more space for conference center uses. A below-grade parking structure including 295 parking spaces is also included in the first-stage PUD approval. The first-stage PUD approval is effective until December 25, 2014.

- 3 On December 21, 2011, the Applicant filed an application requesting that the Commission grant a two-year time extension in which the Applicant was required to file a building permit application for the consolidated PUD and Zoning Map amendment application Pursuant to Z C. Order No. 08-33A, the Commission determined that the Applicant had met the relevant requirements of § 2408.8 of the Zoning Regulations and extended the time period in which the Applicant was required to file a building permit application for the consolidated PUD until December 25, 2013.
4. In the December 21, 2011 time extension application, the Applicant also requested approval to extend the period of the first-stage PUD approval Pursuant to Condition No 20 of Z C Order No 08-33, the first-stage PUD approval is effective until December 25, 2014. The Applicant requested that the first-stage PUD approval be extended until December 25, 2016. In Z C. Order No 08-33A, the Commission denied the two-year time extension request for the first-stage PUD application approved in Z C Order No 08-33 However, the Commission's denial was "without prejudice to the Applicant filing a renewed request once the issue becomes ripe "
- 5 On December 23, 2013, the Applicant filed a second time extension application which sought an additional two years, until December 25, 2015, in which time it would be required to file a building permit application to construct the approved Consolidated PUD project The Applicant also requested a one-year time extension of the approval of the first-stage PUD approval, so that the first-stage PUD approval would be extended until December 25, 2015 Pursuant to Z C. Order No 08-33B, the Commission determined that the Applicant had met the relevant requirements of § 2408.10 of the Zoning Regulations and extended the time period in which the Applicant was required to file a building permit application for the consolidated PUD and the first-stage PUD approval until December 25, 2015 by which time second-stage application for the remaining portions of the portions of the PUD must be filed
6. On June 29, 2015, the Applicant filed an application for a minor modification of the approved consolidated PUD plans (Z.C. Case No 08-33C) At the Commission's July 24, 2015 public meeting, the Commission removed the minor modification request from its consent calendar, and instead set it down for a public hearing The Commission held a public hearing on the modification application on September 24, 2015, and took proposed action in support of the application at the conclusion of the public hearing. The Commission took final action to approve Z C Case No 08-33C on November 9, 2015. A Commission order granting the modification will also appear in the *D C Register*.
7. The Applicant filed the present time extension request concurrently with the request for minor modification of the approved consolidated PUD plans (Z C Case No. 08-33C). The Applicant requested that it be allowed until July 31, 2016 to file a building permit application to construct the consolidated PUD project that includes the modifications approved in Z C. Case No. 08-33C. (Exhibit ["Ex "]1)

- 8 The Applicant noted that it had diligently moved forward with the final design and engineering studies necessary to prepare the plans for a building permit application submission. It was through that process that the Applicant determined that it was necessary to seek approval for the modifications proposed in Z.C. Case No. 08-33C. Upon approval of those modifications, the Applicant will move forward with the preparation of the building permit application materials for the Consolidated PUD. The Applicant noted that extending the deadline to file a building permit application for the modified consolidated PUD will provide the Applicant's design team an adequate amount of time to incorporate the approved modifications into the final building permit application plans. (Ex. 1)
- 9 In its July 17, 2015 report to the Commission, the Office of Planning ("OP") recommended approval of the PUD time extension request. OP concluded that the Applicant satisfied the relevant standards of §§ 2408 10 and 2408 11. (Ex. 5.)
10. Advisory Neighborhood Commission ("ANC") 5A submitted a letter, dated June 25, 2015, in support of the proposed time extension request. The ANC letter noted that at a regularly scheduled and properly noticed public meeting on June 24, 2015, with a quorum present, ANC 5A unanimously approved (6-0) a motion to support this application. (Ex. 4)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11 DCMR §§ 2408 10 and 2408 11 are satisfied. Subsection 2408 10(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The only party in Z.C. Case Nos. 08-33 and 08-33A was ANC 5C. Due to the redistricting of the ANCs in accordance with the results of the 2010 Census, the Property is now located in ANC 5A. ANC 5A was properly served with this time extension request and ANC 5A submitted a letter evidencing its support for this application.

Subsection 2408.10(b) requires that the Commission find that 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. Based on the information provided by the Applicant and OP, the Commission concludes that extending the time period of approval for the consolidated PUD is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original consolidated PUD application.

Subsection 2408 10(c) requires that the applicant demonstrate with substantial evidence that there is a good cause for the proposed extension, as provided in § 2408 11. Pursuant to § 2408 11, an extension of validity of a PUD may be granted if the 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 Commission finds that there is good cause shown to extend the period of time in which the Applicant is required to file a building permit application for the hotel and conference center project approved in the consolidated PUD application. The Commission granted final approval to the modifications of the consolidated PUD application on November 9, 2015 (Z C Case No. 08-33C). Therefore, the Commission is requiring the Applicant to work expeditiously to prepare the building permit plans, which incorporate the recently approved modifications, so that they can be filed with the Department of Consumer and Regulatory Affairs by July 31, 2016. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR§ 2408 11(a) regarding the consolidated PUD application.

The Commission is 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. As noted above, ANC 5A was properly served with this time extension request and supported the time extension request.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623 04), to give great weight to OP recommendations. OP recommended approval of the time extension request and the Commission concurs in its recommendation.

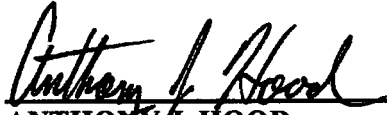
DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a time extension of the consolidated PUD application approved in Z C Order Nos 08-33, 08-33A, 08-33B, and 08-33C. The consolidated PUD approved by the Commission shall be valid until July 31, 2016, within which time the Applicant will be required to file a building permit application to construct the approved consolidated PUD, and construction of the consolidated PUD must start no later than July 31, 2017.

Z.C. ORDER NO. 08-33D
Z.C. CASE NO. 08-33D
PAGE 5

On November 9, 2015, upon motion by Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting 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* on December 4, 2015



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING