

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-12A

Z.C. Case No. 10-12A

Tiber Creek Associates, LLC

**(Time Extension – Capitol Gateway Overlay Review and Special Exception Approval
@ Square 601)
December 10, 2012**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the “Commission”) was held on December 10, 2012. At that meeting, the Commission approved the request of Tiber Creek Associates, LLC (the “Applicant”) for a two-year time extension in which to file a building permit application for the construction of the C Hostel and Hotel approved by Z C Order No. 10-12. The property (Lot 55 in Square 601) that is the subject of this application is located at 129 Q Street, S W (the “Property”). The time extension request was made pursuant to Chapters 1 and 31 of the District of Columbia Zoning Regulations. The Commission determined that these requests were properly before it under the provisions of Chapter 16 and § 3130.6 of the Zoning Regulations.

FINDINGS OF FACT

- 1 Z C Order No. 10-12 (the “Order”), which became final and effective on November 12, 2010, approved the construction of a hostel and hotel concept (the “C Hostel & Hotel”) that will be the first of its kind in the District. The C Hostel & Hotel concept is intended to sell beds rather than rooms. The hotel component of the project will be comprised of rooms with single and double beds and in-room bathrooms. The hostel component of the project will include dormitory-styled rooms and shared female and male showers on each floor. The approved project will consist of approximately 109 rooms and approximately 489 beds.
- 2 In Z C Case No. 10-12, the Commission granted special exception review and design approval pursuant to the Capitol Gateway Overlay District requirements enumerated in § 1610 of the Zoning Regulations. The Commission also granted special exception relief related to the roof structures and the number of parking spaces proposed in the project. There was no opposition to this case and the only party was Advisory Neighborhood Commission (“ANC”) 6D, which supported the application in writing and presented testimony at the public hearing in support of the application.
- 3 The Order contained no expiration date.

- 4 The C Hostel & Hotel was the brainchild of Richard (Dick) W Carr. Mr Carr was the Manager of Tiber Creek Associates, LLC. Mr Carr passed away on June 25, 2010 after a long illness. The ownership interests of Tiber Creek Associates, LLC have become part of the probate of Mr Carr's estate. The probate of that estate is ongoing and is not expected to be completed until 2013. (Exhibit ["Ex "] 1)
- 5 While the probate of Mr Carr's estate was ongoing, the Applicant was significantly constrained in its ability to market the project to various financing sources. In addition, the hospitality industry was hit particularly hard by the recent credit crisis. Hospitality deals that were accomplished have largely been for existing hotels in primary markets. This project, a new hotel and hostel concept in a truly transitional area of the District, does not satisfy either of those requirements. (Ex 1)
- 6 In its November 28, 2012 report to the Commission, the Office of Planning ("OP") recommended approval of the time extension request. OP concluded that the Applicant satisfied the relevant standards of § 3130.6 (Ex 4)
- 7 ANC 6D submitted a letter, dated November 30, 2012, to the Commission which noted its support for the time extension request. (Ex 5)

CONCLUSIONS OF LAW

As noted, the Order contained no expiration date and Chapter 16 of the Zoning Regulations does not provide for the expiration of design review approvals. Nevertheless, the Order included the grant of a special exception, which is normally heard by the Board of Zoning Adjustment. Although the Commission's rules apply even to its considerations of special exceptions, the Commission notes that § 3130.1 of the Board's Rules of Practice and Procedure provides that

No order of the Board authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years unless, within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit, except as permitted in § 3130.6

The Applicant apparently believes that this provision also applies to special exceptions granted by the Commission and we have no reason to disagree. The Commission, therefore, considered the request in accordance with the standards, enumerated in § 3130.6 for granting a time extension request. In doing so, the Commission took no position whether an order granting a Capitol Gateway review expires if the order does not also grant special exception or variance relief.

Subsection 3130.6(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The Applicant served the only party to the application, ANC 6D, when it filed the time extension application on October 12, 2012. ANC 6D adopted a resolution in support of the time extension request.

Subsection 3130 6(b) requires that there is no substantial change in any of the material facts upon which the Board (Commission in this case) based its original approval of the application that would undermine the Board's (Commission in this case) justification for approving the original application. The Commission concludes that extending the time period of approval for the application is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original application.

Subsection 3130 6(c) requires that the applicant demonstrate with substantial evidence that there is a good cause for the proposed extension with substantial evidence of one or more of the following criteria:

- (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control,
- (2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control, or
- (3) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control.

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 C Hostel & Hotel. The Commission finds that the time necessary to complete the probate of Mr. Carr's estate was a factor beyond the Applicant's reasonable control that prevented the Applicant from moving forward with the project. In addition, the Commission notes the distinct impacts that the current real estate recession has had on the hospitality industry and the financing hurdles this project faced due to its new concept and location in a transitional area. The Commission concludes that the Applicant did use good faith efforts to obtain the necessary financing for the project and was ultimately not able to obtain the necessary financing due to the economic and market conditions that were beyond the Applicant's reasonable control. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR § 3130.6.

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 6D adopted a resolution in support of this time extension application, and the Commission found this advice to be persuasive.

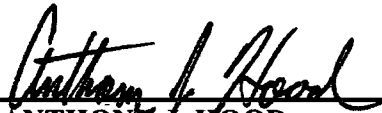
The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations. OP recommended approval of the time extension request and the Commission concurs in its recommendation.

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 two-year time extension of the CG Overlay District review and special exception approved in Z C Order No 10-12 The C Hostel & Hotel project approved by the Zoning Commission shall be valid until November 12, 2014, within which time the Applicant will be required to file a building permit application to construct the approved project

On December 10, 2012, upon motion by Commissioner May, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order 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 adopt, Marcie I Cohen, not present, not voting)

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 May 3, 2013



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING