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ZONING COMMISSION
District of Columbia
CASE NO. 10-26C
District of Columbia
CASE NO. 10-26C
EXHIBIT NO. 8

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-26C
Z.C. CASE NO. 10-26C
ZGZP 3333, LLC
(Two-Year Time Extension of Consolidated PUD and Related Map Amendment
@ Square 3040, Lot 130)
September 21, 2015

Pursuant to notice, a public meeting of the Zoning Commission of the District of Columbia ("Commission") was held on September 21, 2015. At the meeting, the Commission approved a request on behalf of ZGZP 3333, LLC ("Applicant") for a two-year extension of a consolidated planned unit development ("PUD") for property located at 3321-3335 Georgia Avenue, N W. (Square 3040, Lot 130) ("Subject Property"), which was approved in Z.C. Order No. 10-26, and extended in Z C Order No. 10-26A, pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). For the reasons stated below, the Commission hereby approves the extension request.

FINDINGS OF FACT

- 1 Pursuant to Z.C. Order No. 10-26, having an effective date of September 2, 2011, the Commission approved applications for a consolidated PUD and related Zoning Map amendment from the GA/C-2-A Zone District to the GA/C-2-B Zone District for a mixed-use retail and residential development at the Subject Property.
- 2 The approved PUD includes approximately 118,160 square feet of total gross floor area. Of that, approximately 82,801 square feet of gross floor area is devoted to residential use, including 112 units (plus or minus 10%), approximately 7,190 square feet of gross floor area is devoted to retail use, and approximately 23,031 square feet of gross floor area is devoted to loading and other circulation space. The approved PUD has a maximum density of 5.37 floor area ratio ("FAR") and a maximum building height of 90 feet (not including roof structures). The approved project includes 50 off-street parking spaces located in a below-grade garage.
3. Pursuant to Condition C.2 of Z C Order No. 10-26, the approved PUD was valid for a period of two years from the order's September 2, 2011 effective date. Within that two-year period an application for a building permit had to be filed and construction had to begin a year thereafter.
4. Pursuant to Z.C. Order No. 10-26A, having an effective date of November 8, 2013, the Commission granted an extension to Z.C. Order No. 10-26, such that an application must be filed for a building permit no later than September 2, 2015, and construction must begin no later than September 2, 2016.
5. On January 15, 2014, the Applicant filed an application to modify the approved PUD (Z.C. Case No. 10-26B), but on August 22, 2014, the Applicant submitted a request to postpone the modification hearing until after the Commission makes a decision in Z.C.

Case No. 14-13 involving the regulations of rooftop penthouses. The Commission is scheduled to consider that case for final action on October 19th of this year

6. As a result of continued delay with respect to the Subject Property's environmental contamination, as described herein, the Applicant now requests a second time extension of Z.C. Order No. 10-26A, such that a building permit application for the building approved pursuant to Z.C. Order No. 10-26 must be filed no later than September 2, 2017, and construction must begin no later than September 2, 2018
7. By letter dated July 22, 2015, the Applicant submitted a request for a time extension of Z.C. Order No. 10-26A, such that a building permit application for the building approved pursuant to Z.C. Order No. 10-26 must be filed no later than September 2, 2017, and construction must begin no later than September 2, 2018. The Applicant's request was supported by a variety of documentation describing the Subject Property's history of gasoline station use and resultant soil contamination due to a release of petroleum to the subsurface soils and ground water. The Applicant submitted the following documentation in support of its case that it could not reasonably comply with the time limits set forth in Z.C. Order No. 10-26A.
 - a. On June 7, 2013, the District Department of Energy and Environment ("DOEE") issued a Comprehensive Site Assessment and Corrective Action Directive for the Subject Property, designating Sunoco, the prior gas station operator, as the responsible party for contamination, and requiring Sunoco to undertake certain environmental actions at the Subject Property. (Exhibit ["Ex."] 2A) Sunoco hired Kleinfelder as its environmental consultant to undertake site assessment activities at the Subject Property;
 - b. On August 8, 2014, Sunoco (through Kleinfelder) submitted a Comprehensive Site Assessment ("CSA") Work Plan to DOEE for the Subject Property (Ex. 2B.) On December 30, 2013, and June 13, 2014, Sunoco submitted two subsequent CSA reports to DDOE, detailing the completion of monitoring wells and soil borings at the Subject Property. On August 12, 2014, DDOE requested the collection of additional soil and groundwater samples; (See Ex. 2C)
 - c. Sunoco continued environmental testing activities through January 2015, and submitted an updated work plan to DOEE, dated February 7, 2015. DOEE approved the work plan on February 18, 2015; (See Ex. 2D)
 - d. Between February 18, 2015 and April 10, 2015, permitting for conducting the additional studies was delayed as a result of DOEE's Water Quality Division review of the Work Plan and its request for additional information; (See Ex. 2E.)

- e Sunoco initiated the site activities set forth in its February 7, 2015 work plan on May 18, 2015. The work included installation of soil borings and temporary wells, and was expected to take approximately two weeks (*See Ex 2F*) The Applicant submitted to the Commission's case record the Activity Notification Form and a site plan depicting the soil boring and well locations, and (*See Ex 2G*)
 - f. On May 20, 2015, Sunoco successfully collected soil vapor samples from the Subject Property However, during pre-clearing for the borings, Sunoco encountered abandoned underground storage tanks ("USTs") under the Subject Property and was unable to advance the remaining soil borings as anticipated (*See Ex 2H*) After discussions with drilling contractors in May and June of 2015, Kleinfelder indicated that the outstanding borings could not be completed until the beginning of July, 2015 At that point the Applicant filed the extension request
- 8 In its application materials, the Applicant indicated that once the current round of testing and analysis is completed, DOEE will determine the applicable remediation requirements for pre- and post-redevelopment use of the Subject Property. Once remediation is complete, DOEE will issue a No Further Action letter, allowing the Applicant to move forward with development of the Subject Property The Applicant indicated that this process will be finished within two years, such that the Applicant will be able to file a building permit for the approved PUD no later than September 2, 2017
9. The Applicant also noted that despite the extensive environmental testing and remediation that is necessary for the Subject Property, it is committed to moving forward with development of the PUD The Applicant has invested substantial resources in the Subject Property, including legal, architectural, engineering, and other consulting fees, such that there is no financial advantage to not redevelop the Subject Property
10. As a result of the lengthy environmental review and cleanup process that is outside of the Applicant's reasonable control, the Commission finds that the Applicant has shown that it is unable to comply with the time limits set forth in Z.C. Order No. 10-26A. Accordingly, the Commission concludes that this request for a time extension satisfies the sole criterion for good cause shown as set forth in 11 DCMR § 2408.11(c)
11. Other than the Applicant, the only party to this case was Advisory Neighborhood Commission ("ANC") 1A. As indicated on the Proof of Service, the Applicant served the PUD extension request on ANC 1A on July 22, 2015 (*Ex 2*)
12. ANC 1A submitted a resolution to the record, dated July 8, 2015, indicating that at its July 8, 2015 public meeting, at which notice was properly given and a quorum was present, ANC 1A voted 10-0-0 to support the Applicant's request for an extension of the

approved PUD, such that a building permit application must be filed by September 2, 2017, and construction must be started by September 2, 2018 (Ex. 6.)

13. The Office of Planning ("OP") submitted a report to the case record, dated September 11, 2015, indicating that the application meets the standards of 11 DCMR §§ 2408.10 and 2408.11(c) (Ex. 5) OP thus recommended that the Commission approve the requested two year PUD extension

CONCLUSIONS OF LAW

1. The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of approval, provided (a) the extension request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) 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, and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in 11 DCMR § 2408.11. (11 DCMR § 2408.10) Subsection 2408.11 provides the following criteria for good cause shown: (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 or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the planned unit development order.
2. The Commission concludes that 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.
3. The Commission concludes that there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD. The Commission finds that the Applicant remains committed to moving forward with developing the project and fully complying with the conditions and obligations imposed as part of the original PUD order.
4. The Commission concludes that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(c). Specifically, the Commission finds that the Applicant provided substantial evidence that the project has experienced delay beyond the Applicant's control due to the Subject

Property's history of gasoline station use and resultant soil contamination due to a release of petroleum to the subsurface soils and ground water.

5. 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 affected ANC's written recommendations. ANC 1A submitted a resolution in support of the requested extension (Ex. 6.) The Commission carefully considered the report and has given ANC 1A's recommendation great weight in approving this application.
6. 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's recommendations. OP submitted a report indicating that the Applicant meets the standards of 11 DCMR §§ 2408.10 and 2408 11(c) and therefore recommended that the Commission approve the requested extension. (Ex. 5.) The Commission carefully considered OP's report and has given OP's recommendation great weight in approving this application.
7. Subsection 2408.12 of the Zoning Regulations provides that the Commission must 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 11 DCMR § 2408.11. The Commission concludes that a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in 11 DCMR § 2408 11.
8. 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.

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. 10-26C, such that a building permit application for the building approved pursuant to Z.C. Order No. 10-26 must be filed no later than September 2, 2017, and construction of the building must begin no later than September 2, 2018.

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 identify or expression, familial status, family

responsibilities, matriculation, political affiliation, disability, source of income, genetic information, 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.

On September 21, 2015, upon the motion made by Commissioner Turnbull, as seconded by Vice Chairperson Cohen, the Zoning Commission **APPROVED** and **ADOPTED** this request by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve and 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*; that is, on October 16, 2015