

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 11-08B

Z.C. Case No. 11-08B

Il Palazzo Project

(One-Year Extension for a Planned Unit Development and Zoning Map Amendment @

Square 2578, Lot 26)

December 14, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) considered an application from MCREF Embassy, LLC (“Applicant”) for a one-year extension in which to start construction of the planned unit development (“PUD”) approved in Z.C. Case No. 11-08. The time extension request was made pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations. The Commission determined that this request was properly before it under the provisions of § 2408.10 *et seq.* of the Zoning Regulations. The Commission voted to approve the application without a public hearing at its public meeting on December 14, 2015. The reasons for its approval are stated below.

FINDINGS OF FACT

Case Background

1. On March 12, 2012, the Commission issued Z.C. Order No. 11-08 approving a residential PUD at Square 2578, Lot 26, more commonly known as 2700 16th Street, N.W. (“Property”). (Exhibit [“Ex.”] 1A.)
2. The Property consists of approximately 43,494 square feet of land area. The Property is bounded by 16th Street, N.W. to the east, Mozart Place, N.W. to the west, Fuller Street, N.W. to the south, and property of the Scottish Rite Temple to the north. The Property is located just south of Columbia Road. (*Id.*)
3. The Property is split-zoned: the eastern portion is located in the R-5-D Zone District and the western portion is located in the D/R-5-B Zone District in the Diplomatic Overlay. All of the properties along 16th Street, to the north, south, and east, are located in the R-5-D Zone District. (*Id.*)
4. The Applicant requested approval of a PUD-related map amendment for the portion of the Property located in the D/R-5-B Zone District to the R-5-D Zone District. (*Id.*)

5. The approved PUD includes 60-90 spaces of below-grade parking, 110-135 residential units, including six affordable units, at least five of which will be two-bedroom family units to be reserved for households with an annual income no greater than 80% of the Annual Median Income (AMI). (*Id.*)
6. By Z.C. Order No. 11-08A, which became effective on October 17, 2014, the validity of Z.C. Order No. 11-08 was extended through March 9, 2015.
7. Z.C. Order No. 11-08A required that construction of the approved PUD begin before March 9, 2016.
8. On November 11, 2015, MCREF Embassy, LLC, owner of the Property, filed a request to extend the time within which it must start construction of the PUD by one year. (Ex. 1.)
9. The Office of Planning (“OP”) submitted a report dated November 25, 2015, in support of the requested extension. (Ex. 5.)
10. The request was placed on the Commission’s December 14, 2015, meeting agenda, at which time the Commission took action to approve a one-year extension of the time during which construction of the PUD can commence. The start of construction of the PUD was extended through March 9, 2017.

Extension Request

11. Subsection 2408.10 of the Zoning Regulations grants the Commission the authority to extend the time period within which construction of a PUD must commence. The Commission must determine whether: (a) the extension request was served on all parties to the application by the Applicant and that parties were given at least 30 days to respond; (b) there was 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 demonstrated with substantial evidence that there was good cause for such extension.
12. The Applicant satisfied each of the three standards. With respect to the first prong, the request was served on Advisory Neighborhood Commission (“ANC”) 1C, the only party to the PUD, on the same day as it was filed with the Commission. (Ex. 1.) The request was considered by the Commission after the 30-day period for response had lapsed.
13. The neighborhood in which the PUD is to be located has not undergone any significant changes since the PUD was initially granted. (Ex. 1.)
14. The Comprehensive Plan designation and zoning designation for the Property surrounding property remains unchanged since the approval of the PUD in 2011.

15. The Applicant noted that it had purchased the Property four months prior to submitting the request for an extension. (Ex. 1, 1C.)
16. Despite having recently acquired the Property, the Applicant made numerous efforts to meet the deadline for starting construction. It included an affidavit with its extension request that outlined the following efforts it made to start construction of the PUD:
 - Retained Davis Carter Scott to refine the plans to accommodate more livable interior spaces;
 - Hired Mill Creek Residential (“MCR”) as the general contractor. MCR has undertaken surveys to determine its preferred construction plan, including a comprehensive laser scan of the Property, an environmental and geotechnical survey of the Property, a survey of the existing landscaping and retaining wall, as well as an inspection of the roof of the historic resource;
 - Secured through MCR raze and demolition permits to begin interior alteration and hazardous material abatement on-site. Permit No. B1510743 was issued on July 29, 2015, and Permit No. B1510933 was issued on August 3, 2015, just one month after the Applicant closed on the Property; and
 - Met with representatives of the Festival Kitchen to coordinate construction of their kitchen space with construction of the project, using MCR as general contractor.
17. ANC 1C did not submit a report into the record to indicate its support or opposition of the extension.
18. OP submitted a report dated November 25, 2015. OP recommended approval of the time extension request and noted the Applicant’s fulfillment of the standard promulgated in § 2408.10 of the Zoning Regulations. OP noted that there had been a change in ownership that delayed the start of construction, which made compliance with the PUD deadlines beyond the Applicant’s control. (Ex. 5.)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11 DCMR §§ 2408.10, 2408.11, and 2408.12 are satisfied. Subsections 2408.10 and 2408.11 give the Commission the authority to extend the period during which construction must commence. 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 Applicant served ANC 1C, the only other part in this proceeding, when it filed the PUD and Zoning Map amendment and time

extension application on November 11, 2015. The ANC was given 30 days to respond to the extension request.

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. The Commission concludes that extending the time period of approval is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original PUD application.

Finally, § 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 within which construction of the PUD must commence. The Commission also finds that the Applicant has made good faith efforts to start construction within the requisite time period and demonstrated that it continues to pursue construction of the PUD.

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, which in this case is ANC 1C. As noted, that ANC did not submit a report as to this 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's recommendations (as discussed in paragraph 18 above). OP recommended approval of the time extension request and the Commission concurs in its recommendation.

For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR §§ 2408.10 and 2408.11.

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 Z.C. Case No. 11-08B for a one-year time extension of Z.C. Order No. 11-08A. The validity of the PUD is extended until March 9, 2017, within which time construction of the PUD must commence.

For the reasons stated above, the Commission concludes that the Applicant has met its burden; it is hereby **ORDERED** that the request be **GRANTED**.

On December 14, 2015, upon motion by Vice Chairperson Cohen, as seconded by Commissioner May, the Zoning Commission **APPROVED** the application and **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 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* on February 19, 2016.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING