

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 12-21A

Z.C. Case No. 12-21A

Covenant Baptist United Church of Christ; Covenant Full Potential Development
(Consolidated Planned Unit Development and Related Zoning Map Amendment for
Square 6129, Lot 825)

Pursuant to proper notice a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on May 23, 2016. At the meeting, the Commission approved a request from Covenant Baptist United Church of Christ and Covenant Full Potential Development (the "Applicants") for a time extension for an approved consolidated planned unit development ("PUD") and related amendment of the Zoning Map of the District of Columbia from R-2 to R-5-A for Square 6129, Lot 825 pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

FINDINGS OF FACT

Application, Parties, and Hearing

1. By Z.C. Order No. 12-21 dated March 31, 2014, and effective on April 18, 2014, the Commission approved a PUD for Lots 825, Square 6129, (the "Property"). The order approved the redevelopment of the Property with a new three-story addition to the existing church building. The new apartment building containing approximately 47,252 square feet is to be devoted to subsidized senior housing and support space. Pursuant to Condition D (2) of the Order, the PUD approval would expire unless an application for a building permit as specified in 11 DCMR § 2409.1 was filed by April 18, 2014.
2. By application dated and received by the Commission on April 15, 2016, the Applicant requested to extend the validity of the PUD approval for a period of two years. The request, if approved, would require that an application for a building permit must be filed no later than April 18, 2018, and construction must be started no later than April 18, 2019.
3. The Applicant submitted evidence that the project has experienced delay beyond the Applicant's control due to financing difficulties based upon adverse economic and market conditions as well as difficulties associated with the timing and application process for needed subsidies from the DC Department of Housing and Community Development.

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4. The Applicant served a copy of the request on Advisory Neighborhood Commission ("ANC") 8C and 8D, the only parties to the case. The ANCs did not submit a response.
5. The Office of Planning ("OP") submitted a report dated May 13, 2016 (Exhibit 5), indicating that the Applicant meets the standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations. OP therefore recommended that the Commission approve the requested two-year PUD extension.
6. The Commission finds that that there has not been a substantial change in the material facts since the original approval of the PUD and finds that the essential elements of the PUD have not changed. Because the Applicant demonstrated good cause with substantial evidence pursuant to § 2408.11 (a) of the Zoning Regulations, the Commission finds that the request for the two-year time extension should be granted.

CONCLUSIONS OF LAW

The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the 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 material fact 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 § 2408.11. (11 DCMR § 2408.10.)

Section 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.

The Commission concludes there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.

The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving ANC 8C and 8D with a copy of the application and allowing it 30 days to respond.

The Commission concludes that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11 (a). Specifically, the Applicant has been unable to obtain sufficient financing for the PUD including government subsidies, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.

Section 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 § 2408.11. The hearing shall be limited to the specific and relevant evidentiary issues in

dispute. The Commission concludes 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 § 2408.11.

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 the application for a two-year extension of the time in which to file a building permit for the construction of the PUD which was initially approved in Z.C. Order No. 12-21. The approval of the two-year extension shall be valid until April 18, 2018, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than April 18, 2019.

In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 21401.01 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 identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On May 23, 2016, upon the motion made by Chairman Hood, as seconded by Commissioner Cohen, the Zoning Commission approved this application by a vote of 5-0-0 (Anthony J. Hood, Marcie Cohen, Robert Miller, Michael G. Turnbull, and Peter G. May to approve.)

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_____.