

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-05A
Z.C. Case No. 13-05A
Forest City Washington
(PUD Time Extension @ Squares 744S and 744SS)
March 14, 2016

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on March 14, 2016. At that meeting, the Commission approved the application of Forest City Washington for a time extension in which to file a building permit application for the consolidated planned unit development (“PUD”), approved by Z.C. Order No. 13-05, until February 7, 2018 (“Application”). The Commission denied a time extension for the first-stage PUD approved by the Commission in Z.C. Order No. 13-05 as being premature. The property (Square 744S, part of Lot 805, and Square 744SS, part of Lot 801) that is the subject of this Application is bordered by N Place, S.E. on the north, 1st Street, S.E. on the west, the Anacostia River on the south, and property used by District of Columbia Water and Sewer Authority (“WASA”) operations on the east (“Property”). The time extension requests were made pursuant to Chapters 24 of Title 11 DCMR¹

FINDINGS OF FACT

BACKGROUND INFORMATION

1. Z.C. Case No. 13-05 included both a consolidated PUD approval and a first-stage PUD approval. The consolidated PUD project approved in Z.C. Order No. 13-05, which became final and effective on February 7, 2014, authorized the construction of a movie theater and parking garage structure in the northeastern corner of the Property (such property known as the “F1 Parcel”). The consolidated PUD approval was effective for two years from the effective date of the Order (that is, until February 7, 2016).
2. The first-stage PUD approval included three additional parcels located along 1st Street, S.E. and known as the G1, G2, and G3 Parcels, which will be developed with a mix of

¹ Chapter 24 and all other provisions of Title 11 DCMR were repealed on September 6, 2016. Chapter 24 is now Chapter 3 of DCMR Title 11-X. The repeal of Chapter 24 and the adoption of the replacement provisions has no effect on the validity of the Commission’s decision or the validity of this Order

residential and retail uses. The first-stage PUD approval is effective for 12 years from the effective date of the Z.C. Order No. 13-05 (that is, until February 7, 2026).

3. Z.C. Order No. 13-05 also authorized the PUD-related rezoning of the Property from the CG/W-2 Zone District to the CG/CR and CG/W-1 Zone Districts. (The entirety of the F1 Parcel was rezoned to the CG/CR Zone District.)
4. On February 5, 2016, the Applicant filed a request asking 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. The Applicant also requested that the Commission extend the first-stage PUD and Zoning Map Amendment for an additional two years. (Exhibit [“Ex.”] 1.)
5. The Applicant served the extension request on the two parties to the application, ANC 6D and WASA. (Ex. 1.) The Commission provided both parties at least 30 days to respond, and WASA filed a response in support of the extension on March 5, 2016.
6. In a signed affidavit, the Applicant indicated that since the approval of the PUD, the Applicant proceeded diligently and in good faith to realize the Project. Actions taken included: negotiating and entering into a lease with the theater operator; modifying the design of the Project to accommodate the needs of the theater operator; negotiating and executing a Land Disposition Agreement with the District of Columbia, and securing approval from the DC Council for the same; and working with the Deputy Mayor for Planning and Economic Development (“DMPED”) and WASA on the relocation of existing WASA operations from the Property, which is required in order to effectuate the PUD. (Ex. 1B.)
7. The Applicant explained that the relocation of WASA operations is not within the Applicant’s control, but instead must be undertaken by DMPED and WASA. The relocation requires the evaluation, identification, and agreement on alternative locations; determination of the scope and responsibility for the development of replacement facilities; the design, permitting, and relocation of the replacement facilities; and relocation of WASA to the replacement facilities. The Applicant noted that to date one relocation site had been identified and closed on, and another relocation site had been identified and was under negotiation. The additional steps still needed to be undertaken. Relocation of one of WASA’s operations will permit the development of the F1 Parcel. The Applicant explained that it had been meeting regularly with DMPED and WASA to assist in the relocation efforts. (Ex. 1B.)
8. The Applicant indicated that to date it had expended approximately \$1,826,000 on the negotiation of the theater lease and LDA, refinement of the design of the F1 Parcel, and assistance in WASA relocation efforts. (Ex. 1B.)
9. In its letter of support, WASA raised issues regarding property access and coordination between the Project and WASA’s PUD approving the construction of a new office

headquarters on adjacent Property. (Ex. 6.) In a supplemental letter, the Applicant explained that such issues were outside the bounds of the Zoning Regulations and would be worked out among DMPED, WASA, and the Applicant. (Ex. 7.)

10. The Applicant explained that the additional time would allow the Applicant to finish the refinements to the plans, and it would allow DMPED and WASA to complete relocation activities needed to move forward with the development of the F1 Parcel.
11. The Commission did not receive a report from either the Office of Planning or Advisory Neighborhood Commission (“ANC”) 6D.

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 parties in Z.C. Case No. 13-05 were ANC 6D and WASA. ANC 6D and WASA were each properly served with this time extension request and WASA submitted a letter evidencing its support for this 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. Based on the information provided by the Applicant, 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 F1 Parcel component of the PUD. The time needed to relocate WASA operations is beyond the Applicant's reasonable control and has rendered the Applicant unable to comply with the time limits of the PUD order for the consolidated PUD. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR § 2408.11(a) regarding the application for a time extension of the consolidated PUD.

The first-stage PUD application approved in the Order is effective until February 7, 2026. The Commission concludes that the request for extension of the first-stage PUD is premature at this time, given the length of time remaining for the first-stage PUD. The Commission's denial is without prejudice to the Applicant filing a renewed request should the issue become ripe.

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 was properly served with this time extension request but did not submit a report.

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 did not submit a report regarding the Application.

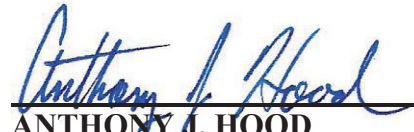
DECISION

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 approved in Z.C. Order No. 13-05. The consolidated PUD approved by the Commission shall be valid until February 7, 2018, 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 February 7, 2019.

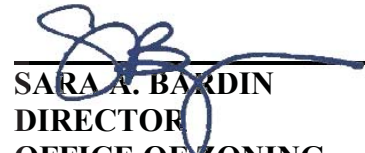
The Commission **ORDERS DENIAL** of a time extension of the first-stage PUD approved in Z.C. Order No. 13-05 at this time. The first-stage PUD approved by the Commission remains valid until February 7, 2026. This denial is without prejudice to the Applicant requesting a time extension closer to the expiration date should it believe that additional time is needed to file any remaining second-stage applications.

On March 14, 2016, upon motion by Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the Application to extend the consolidated PUD and **DENIED** the Application to extend the first-stage PUD at its public meeting by a vote of **5-0-0** (Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve and deny; Anthony J. Hood to approve and deny by absentee ballot).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register* on November 25, 2016.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING