

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-13F
Z.C. Case No. 07-13F
Lowe Enterprises
(Two-Year Time Extension for a Consolidated PUD
@ Square 643-S, Lot 801)
May 8, 2017**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on May 8, 2017. At that meeting, the Commission approved the request of Lowe Enterprises (“Applicant” or “Lowe”) for a two-year time extension, until May 9, 2019, in which to file for a building permit and May 9, 2020 to start construction of a planned unit development (“PUD”) as approved by Z.C. Order No. 07-13, as modified and extended by Z.C. Order No. 07-13D. The property (Lot 801 in Square 643S) that is the subject of this application has an address of 65 I Street, S.W. (“Property”). The time extension request was made pursuant to 11-Z DCMR § 705.2.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. By Z.C. Order No. 07-13, effective March 21, 2008, the Commission approved a PUD and map amendment for Lot 801 in Square 643S. The Property is improved with the former Randall Junior High School, a District of Columbia historic landmark. The Commission approved a minor modification to allow phased construction of the PUD by Order No. 07-13A, effective September 27, 2008. Thereafter, the original developer abandoned the project.
2. In 2010, TR SW acquired the development rights to the Property and engaged architects Bing Thom and Beyer Blinder Belle to revise the development plan for the Property.
3. The PUD was extended three times, with the last extension being solely for the purpose of keeping the original PUD in place so that the Commission could consider a request for modification.
4. In Z.C. Order No. 07-13D, effective May 9, 2014, the Commission approved a PUD modification that included substantially revised architecture, different arts uses, a reduction in parking, relocation of the loading below grade, an increase in the height of the residential portion of the building, and an increase in the number of residential uses

provided (“Modified PUD”). The Modified PUD includes the proposed museum, reuse of an existing historic landmark, housing, and affordable housing.

5. The order approving the Modified PUD was valid until May 9, 2016, by which time the Property’s owner had to file for a building permit, with construction starting no later than May 9, 2017.

CURRENT APPLICATION

6. On March 27, 2017, the Applicant requested a two-year time extension of the period of approval for the modified PUD project. The Applicant requested that the Commission extend the time period in which it is required to file a building permit application until May 9, 2019 with construction to begin by May 9, 2020.
7. This is the fourth extension requested for the PUD, and the first extension requested for the Modified PUD. The Applicant, therefore, requested a waiver of 11-Z DCMR §705.5, which limits to two the total number of time extension for a PUD, with the second extension limited to one year.
8. The Applicant provided a certificate of service which noted that the time extension application was served on Advisory Neighborhood Commission (“ANC”) 6D, the sole party to the PUD case
9. Since early 2016, Lowe has worked with TR SW to review the complex series of approvals that govern development of the Property and reach the necessary agreements that would allow the Modified PUD to move forward. These efforts include the following affirmative actions:
 - Based upon Lowe’s extensive review of the prior approved plans, Lowe advised that the Modified PUD requires further modifications to make it viable. Consequently, Lowe, TR SW, and the project architect (Beyer Blinder Belle) worked through 2016 on these modifications. During the due diligence, Lowe met with various stakeholders, including the D.C. Historic Preservation Office (“HPO”), Office of Planning (“OP), the ANC, and others to get community buy-in. Initial feedback from these stakeholders was that the modifications were improvements to the plan and would result in a better project for the community;
 - Lowe also met with representatives of the District, through the Office of the Deputy Mayor for Planning and Economic Development (“DMPED”) to review the status of an existing Covenant with the District that governs development of the Property and related agreements, and determined what additional measures are necessary to implement the PUD; and
 - Lowe and TR SW worked together to establish the appropriate financial and development collaboration that would allow the PUD to proceed.

10. After approximately a year of due diligence, discussions with key city representatives and community stakeholders, and internal discussions, Lowe and TR SW reached agreement on March 6, 2017 to designate Lowe as the lead entity in the development of the PUD.
11. There has been no substantial change of material facts since the Commission's approval of the Modified PUD in 2014 that undermine the Commission's justification for approving the PUD application. There are no changes to the Zoning Regulations or the Comprehensive Plan that would impact the material facts upon which the Commission based its original approval. The development of the PUD will also further the goals and policies of the recently adopted Southwest Small Area Plan, which anticipates additional arts and culture within the proposed art museum, affordable housing within the residential component of the PUD, and the development of I Street in front of the Property as a "cultural corridor."
12. ANC 6D submitted a report, dated April 6, 2017, into the record. (Exhibit ["Ex."] 4.) In its report, the ANC requested that the Commission impose conditions on this time extension or the anticipated PUD modification to require that the Applicant:
 - a. Commenting demolition and abatement work on the site no later than the 4th quarter of 2018;
 - b. File for permits required to construct the project within one year of the approval of the forthcoming PUD modification;
 - c. Commit to a regular schedule of care;
 - d. Maintain the property prior to the start of construction: and
 - e. Post visible signage within the next three months identifying Lowe Enterprises' role in the development of the apartment and museum complex and anticipated commencement of construction.
13. OP submitted a report on April 16, 2017. The OP report stated that OP supported the approval of the time extension and had no objection to the waiver of the limit on time extensions under Subtitle Z § 705.5. (Ex. 5A.)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11-Z DCMR § 705.2 are satisfied. Subsection 705.2(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. ANC 6D, the only party to the case, was served with this time extension request and as noted filed a report in the record expressing issues and concerns that will be discussed below. (Ex. 4.)

Subsection 705.2(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 and OP, 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 705.2(c) requires that an applicant demonstrate with substantial evidence one or more of the following criteria:

- (a) An inability to obtain sufficient project financing for the development, 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 development 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 order.

The Commission finds that there is good cause shown to extend the period of time in which the Applicant is required to file the building permit application and subsequently to start construction. Both TR SW and the Applicant have worked diligently and in good faith to bring the project to fruition but the project requires additional changes. Lowe plans to proceed rapidly to file an application for the Commission to approve the modified project soon after approval of this extension.

Granting the two-year time extension to file the building permit until May 9, 2019 (with construction to start by May 9, 2020) for the PUD will be sufficient to allow Lowe as the new Applicant to prepare the new application for further modification of the PUD, and if such approval is given, obtain approvals, prepare building permit plans, and file for permit for this project to meet the extended deadline for filing for a building permit. Although the extension request is premised upon the Commission's approval of the modification, the Commission obviously makes no such presumption. The extension is granted simply to permit the Applicant to continue its efforts to create a viable project. Further, pursuant to 11 DCMR § 704.5, the filing of any such modification application does not toll the extended timeframes granted by this order.

In regards to the Applicant's request for a waiver from 11-Z DCMR § 705.5, the Commission may, for good cause shown, waive any of the provisions of Subtitle Z if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law. (See 11-Z DCMR § 101.9.) The Commission concludes that although there have been prior extensions; this is in reality the first request to extend the PUD as modified. The extension limit was adopted in part to incentivize the prompt delivery of PUDs. Here, the developer is actively engaged in trying to bring this stage of the project to fruition and no public purpose is served by killing the entire project in these circumstances.

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 requested the Commission to impose several conditions on the grant of this time extension and the anticipated further modification. A time extension merely continues an approval, and makes no change to it. It is, therefore, not appropriate to add conditions to a time extension that would modify the approval. It is also premature for the Commission to consider what conditions it should impose on a modification request it has yet to see. For these reasons, the Commission does not find the ANC’s advice to be persuasive.

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 supported the time extension request and had no objection to the granting a waiver for an additional time extension.

DECISION

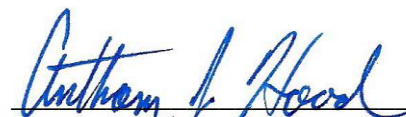
In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of Z.C. Case No. 07-13F until May 9, 2019; within such time the Applicant will file for a building permit for the Modified PUD. Prior to May 9, 2020, the Applicant will begin construction of the Modified PUD. As noted, these same timeframes will apply to any further modification of the PUD, unless the Commission determines that new timeframes should be established.

On May 8, 2017, upon the motion of Commissioner Shapiro, as seconded by Chairman Hood, the Zoning Commission took **FINAL ACTION** to **APPROVE** this application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Peter A. Shapiro, Michael G. Turnbull, and Peter G. May to approve; Robert E. Miller, not present, not voting).


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*; that is on August 11, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

 for

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING