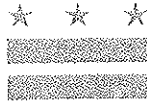


GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-33B
Z.C. Case No. 08-33B
Conference Center Associates I, LLC
(Time Extensions for Consolidated Planned Unit Development and
First Stage Planned Unit Development @ Parcel 121/31)
February 10, 2014

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on February 10, 2014. At that meeting, the Commission approved the request of Conference Center Associates I, LLC ("Applicant") for a second two-year time extension in which to file a building permit application for the consolidated planned unit development ("PUD") and Zoning Map Amendment application, and a one-year time extension period for the first-stage PUD approval approved by Z.C. Order No. 08-33. The property (Parcel 121/31) that is the subject of this request is located at the intersection of Irving Street, N.E. and Michigan Avenue, N.E. ("Property"). The time extension requests were made pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. Z.C. Case No. 08-33 included both a consolidated PUD approval and a first-stage PUD approval. The consolidated PUD project approved in Z.C. Order No. 08-33, which became final and effective on December 25, 2009, authorized the construction of a hotel, conference center, restaurant, parking structure, and retail space on the eastern half of the Property. The 314 room hotel (which includes a restaurant) and conference center has frontage along Michigan Avenue, N.E. and Irving Street, N.E. and a four-story above-grade structure along Michigan Avenue that will include retail uses at grade and in a basement level and 400 parking spaces. A 200 space surface parking lot on the northern portion of the Property was also approved in the consolidated PUD application. Z.C. Order No. 08-33 also authorized the rezoning of the Property from unzoned (designated as GOV) to the C-3-A Zone District.
2. The first-stage PUD approval included two nine story buildings with a measured building height of 94.5 feet (as measured from the curb at Irving Street) that will be no taller than 90 feet as measured from the finished grade at the building. The two buildings will be dedicated to either additional hotel and/or residential units and may include more space for conference center uses. A below-grade parking structure including 295 parking

spaces is also included in the first-stage PUD approval. The first-stage PUD approval is effective until December 25, 2014.

3. On December 21, 2011, the Applicant filed a written request 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. Pursuant to Z.C. Order No. 08-33A, the Commission determined that the Applicant had met the relevant requirements of § 2408.8 of the Zoning Regulations and extended the time period in which the Applicant was required to file a building permit application for the consolidated PUD until December 25, 2013.
4. In the December 21, 2011, time extension request, the Applicant also requested approval to extend the period of the first-stage PUD approval. Pursuant to Condition No. 20 of Z.C. Order No. 08-33, the first-stage PUD approval is effective until December 25, 2014. The Applicant requested that the first-stage PUD approval be extended until December 25, 2016. In Z.C. Order No. 08-33A, the Commission denied the two-year time extension request for the first-stage PUD application approved in Z.C. Order No. 08-33. However, the Commission's denial was "without prejudice to the Applicant filing a renewed request once the issue becomes ripe."
5. On December 23, 2013, the Applicant filed the present time extension request, which sought an additional two years, until December 25, 2015, in which time it will be required to file a building permit application to construct the approved consolidated PUD project ("Request"). The Applicant also requested a one-year time extension of the approval of the first-stage PUD approval, so that the first-stage PUD approval will be extended until December 25, 2015.
6. The Applicant noted that just as in the period from 2009-2011, it engaged in significant efforts in the past two years to find debt and equity financing for this project. The Applicant noted that those efforts have not been fruitful due to the ongoing difficult lending environment for new hotel projects and the specific factors that impact this project – a hotel and conference center with restaurant and retail in an unproven hotel market. (Exhibit ["Ex."] 1.)
7. The Applicant also provided evidence that the credit crisis hit the hospitality industry particularly hard. Nationally, hotel financing slowed to a trickle. Even as some areas of the real estate market have returned (such as multi-family housing), the hospitality industry has continued to face strong headwinds. The Applicant provided an article from the August 21, 2013 edition of Hotel News Now which notes: "Construction financing is loosening in the U.S., but it still has a long way to go before new supply reaches its long-run average." This article also states: "Financing remains the most significant hurdle to overcome for new development". In particular, the DC-MD-VA hospitality market was recently found to be the worst performer, in terms of RevPAR – revenue per available room, of the top 25 markets in the country. (Ex. 1, 3, 5.)

8. The Applicant noted that while there is continuing interest in investing in the project from equity investors and lenders, the hotel lending environment remains particularly difficult for the DC region due to both the continued fallout on lending from the national economic downturn and the impact in 2012 and 2013 of the government spending reductions due to sequestration and government budget battles, including the recent government shutdown. These constraints on government spending greatly reduced both government travel and travel by government contractors, the combined effect of which was the poor relative revenue performance of the DC-MD-VA hospitality market compared to the rest of the nation. The previously identified concerns about the nature of the project include the following:
- Hotels as higher risk than other forms of commercial real estate;
 - Hotel financing is much more available for existing hotels with demonstrable historical performance as opposed to new construction; and
 - No previous track record for hotels in the area of DC where the project is located, so a lack of comparable projects for valuation purposes.
- (Ex. 1, 5.)
9. In response to issues raised at the January 27, 2014 public meeting, the Applicant submitted additional information on February 3, 2014. The Applicant noted that from 2011 to the present the Applicant continued to actively explore financing opportunities with brokers, equity investors and lenders with whom the members of the project team have had prior relationships and from newly identified sources. The Applicant estimated that it had over 25 meetings and follow-up discussions with brokers, equity investors, regional and national bank representatives, as well as other financing sources. The Applicant provided evidence that it was faced with untenable financing terms of a 50% equity requirement and extremely high interest rates, in the range of 8-10%. (Ex. 9.)
10. In its January 17, 2014 report to the Commission, the Office of Planning ("OP") recommended approval of the PUD time extension request. OP concluded that the Applicant satisfied the relevant standards of §§ 2408.10 and 2408.11. (Ex. 7, 8.)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved second stage or consolidated PUD provided the requirements of 11 DCMR § 2408.10 and 2408.11 are satisfied. Subsection 2407.11 authorizes the Commission to extend a first stage PUD "in accordance with the standard and process for second-stage PUD extensions set forth in § 2408.10 through 2408.12."

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 only party in Z.C. Case Nos. 08-33 and 08-33A was Advisory Neighborhood Commission ("ANC") 5C. Due to the redistricting of the ANCs in accordance with the results of the 2010 Census, the Property is now located in ANC 5A. The Single Member District ANC Commissioner for the Property is Mr. Ronnie Edwards.

Commissioner Edwards was the SMD Commissioner for the Property during the Zoning Commission's review of Z.C. Case Nos. 08-33 and 08-33A. ANC 5A was properly served with this time extension request, but ANC 5A did not participate in this Request.

Section 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 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.

Section 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 hotel and conference center project approved in the consolidated PUD application. The Applicant engaged in numerous meetings with financial institutions and brokers in order to obtain project financing and was presented with financing terms that the Commission recognizes as not sufficient to allow this project to move forward. In addition, the Commission notes the distinct impacts that the current real estate recession has had on the hospitality industry and in particular the hospitality industry in the DC Metropolitan region due to sequestration budget cuts and government budget battles. The Commission concludes that the Applicant did use diligent good faith efforts to obtain the necessary financing for the consolidated PUD project and was ultimately not able to obtain the necessary financing due to economic and market conditions that were beyond the Applicant's reasonable control. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR§ 2408.11(a) regarding the consolidated PUD application.

The first-stage PUD application approved in Z.C. Case No. 08-33 is effective until December 25, 2014. The Commission concludes the Applicant provided appropriate notice to the interested party by serving ANC 5A with a copy of the Application and allowing the ANC 30 days to respond. The Commission concludes that all of the reasons for extending the period of approval of the consolidated PUD application are appropriate to extend the time period of approval for the first-stage PUD approval for one additional year. The Commission believes that having the expiration dates of both the consolidated and first-stage PUD approvals on December 25, 2015 is entirely appropriate.

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 5A was properly served with this time extension request but did not participate in this case.

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 (as discussed in Findings of Fact #10 above). OP recommended approval of the time extension request and the Commission concurs in its recommendation.

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 two-year time extension of the consolidated PUD application approved in Z.C. Order No. 08-33 and extended in Z.C. Order No. 08-33A. The consolidated PUD approved by the Commission shall be valid until December 25, 2015, 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 December 25, 2016.

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 one-year time extension of the first-stage PUD application approved in Z.C. Order No. 08-33. The first-stage PUD approved by the Commission shall be valid until December 25, 2015, within which time the Applicant will be required to file a second stage PUD application for the remaining portions of the PUD.

On February 10, 2014, upon motion by Commissioner Cohen, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** this application 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).

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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 October 10, 2014.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING