

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-03A
Z.C. Case No. 10-03A
Parcel Seven Associates, LLC
(Two-Year PUD Time Extension @ Square 912, Lot 55)
January 10, 2013

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on January 14, 2013. At the meeting, the Commission approved a request on behalf of Parcel Seven Associated, LLC (the "Applicant") for a two-year extension of time period in which to file a building permit for the construction of a mixed-use development composed of retail and residential uses, which was approved in Z.C. Order No. 10-03.

FINDINGS OF FACT

1. On February 25, 2010, the Applicant filed an application seeking preliminary and consolidated approval of a planned unit development ("PUD") for Lot 55 in Square 912. The property is presently zoned C-2-B and is located within the H Street Northeast Commercial Overlay District.
2. The property has a land area of approximately 87,053 square feet, which is approximately two acres, and is located in the northeast quadrant of the District. The property is located on the south side of H Street, between 8th and 10th Streets, N.E., and is presently improved with the one-story "H Street Connection" strip retail development, which has a gross floor area of approximately 37,992 square feet.
3. The project will be a mixed-use development composed of retail and residential uses. The overall project will have a density of 5.0 floor area ratio ("FAR"), less than the maximum permitted of 6.0 FAR under the C-2-B PUD requirements, and will include approximately 380,560 square feet of residential uses, comprising 284 units plus or minus 10% and approximately 51,420 square feet of retail uses. The building will have varying heights and cornice lines and will be constructed to a maximum height of 90 feet with a maximum of eight stories. The project will have an overall lot occupancy of approximately 70%. A total of 405 off-street parking spaces will be provided in a below-grade parking garage, with approximately 340 spaces for residential use and 65 spaces for commercial use.

4. Pursuant to Z.C. Order No. 10-03 (the "Order"), the Commission granted consolidated PUD approval for the construction of a mixed-used development composed of retail and residential uses on the property. The Order became effective upon publication in the *D.C. Register* on January 14, 2011. The Order requires the Applicant to file a building permit application for the first phase of the development no later than January 14, 2013. Construction of the first phase must begin no later than January 14, 2014.
5. By letter dated and received by the Commission on December 4, 2012, the Applicant filed a request for extension in which to file a building permit for the construction of the development such that an application for a building permit must be filed no later than January 14, 2015, and construction must be started no later than January 14, 2016.
6. The Office of Planning ("OP") submitted a report dated January 4, 2013 indicating that the Applicant meets the standards of § 2408.10 and 2408.11 of the Zoning Regulation. OP thus recommended that the Commission approve the requested two-year PUD extension. (Exhibit ["Ex."] 8.)
7. Advisory Neighborhood Commission ("ANC") 6A submitted a letter dated January 12, 2013 indicating that at the regularly scheduled meeting ANC 6A voted 8-0 in support of the requested extension. (Ex. 9.)
8. As to the merits, the Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. The Applicant has taken many steps to move forward with the development which is the subject of this application, including the following:
 - Working diligently with various existing retailers currently in operation at the property to renegotiate their existing leases in a manner feasible to all parties that will enable development of the site. The Applicant has reached agreements with Marvelous Pizza, Ann's Nails, Dana Jewelry, Game Stop, McDonalds, and Tony Pham Pizza, and is continuing its efforts with the remaining tenants, including, for example, 7-Eleven;
 - Engaged in discussions with numerous potential lenders to finance the project and brokers to market the project. For example, CBRE has provided market research that the Applicant presented to potential development partners, lenders, and private equity groups;
 - Sought funding from a number of institutional lenders and capital sources indirectly through Walker & Dunlop, LLC and The Ackman-Ziff Real Estate Group, both of which have worked with the Applicant on other projects;

- Engaged in discussions with a number experienced residential developers, including William C. Smith + Co., Archstone, The Bozzuto Group, and ROSS Development & Investment, to determine their interest in partnering to develop the project; and
 - Spent approximately \$890,000 in preparing the necessary plans and securing PUD approval.
9. Despite these substantial efforts, and as the Commission has recognized in approving recent extension requests, the real estate market has been subject to, and continues to suffer from, severe financing, construction, and leasing impediments. The Applicant has worked with Walker & Dunlap, LLC, one of the leading commercial real estate finance companies in the United States, with a primary focus on multi-family lending, in an attempt to secure financing for the project. However, due to continuing economic conditions, those efforts have been unsuccessful. Although a number of projects have been able to secure financing, the multi-family sector has continued to be sluggish and uncertain due to a number of factors, including political and economic uncertainties, depressed leasing activity, increased vacancy rates, and slow new hiring.
10. Thus, the Commission finds that the approved development cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control. Indeed, no segment of the real estate market has escaped the frozen credit markets, including retail and residential projects. Moreover, although a number of projects have been able to progress, development of new buildings in emerging neighborhoods in the Washington, DC area has stalled. In addition, a number of potential investors have expressed concern with the potential over-supply of the residential market given the impending delivery of hundreds of new residential units over the next 12-18 months in the same neighborhood. Nevertheless, the recovery is expected to continue, with the District among the leading markets in the country. Therefore, the Commission finds that this request for extension satisfies the sole criterion for good cause shown as set forth in § 2408.11(a) of the Zoning Regulations.

CONCLUSIONS OF LAW

1. 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 Zoning 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.) Subsection 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 limits of the PUD order.

2. The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.
3. 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.
4. 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 issues and concerns raised in the affected ANC's written recommendation. By letter dated January 12, 2013, ANC 6A indicated that ANC 6A voted 8-0 to recommend that the Commission grant the full two-year extension requested by the Applicant, such that an application must be filed for a building permit no later than January 14, 2015 and construction must start no later than January 14, 2016. The Commission carefully considered the ANC's recommendation in its deliberations, and has given ANC 6A's recommendation great weight in approving this application.
5. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. OP submitted a report indicating that the Applicant meets the extension standards of the Zoning Regulations, and therefore recommended that the Commission approve the requested extension. The Commission carefully considered OP's recommendation in its deliberations and has given OP's recommendation great weight in approving this application.
6. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11(a) and (b). Specifically, the Applicant has been unable to obtain sufficient project financing for the PUD, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control. In addition, the Applicant was unable 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.

7. Subsection 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.
8. 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 of the Zoning Regulations.
9. 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.

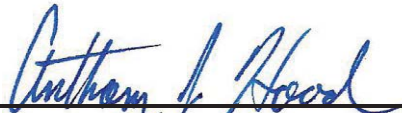
DECISION

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 time extension of the validity of Z.C. Order No. 10-03, such that an application must be filed for a building permit for the PUD no later than January 14, 2015, and construction must start no later than January 14, 2016.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 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 identify or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic information, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On January 14, 2013, upon the motion made by Commissioner Turnbull as seconded by Commissioner Miller, the Zoning Commission **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 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*; that is, on March 8, 2013.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING