

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-13B
Z.C. Case No. 07-13B
(Trustees of the Corcoran Gallery of Art – Two-Year PUD Time Extension
@ Square 72, Lot 74)
February 22, 2010

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on February 22, 2010. At the meeting, the Commission approved a request from Trustees of the Corcoran Gallery of Art (the "Applicant") for a time extension for an approved planned unit development ("PUD") for property consisting of Lot 801 in Square 643-S (the "Subject Property") pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations. The Commission determines that an extension of time of the validity of the PUD is in the best interests of the District of Columbia and is consistent with the intent and purposes of the Zone Plan.

FINDINGS OF FACT

1. By Order No. 07-13, the Commission approved a PUD for the property located on the Subject Property and an application to amend the Zoning Map from the R-4 Zone District to the C-3-C Zone District for the Subject Property. The Subject Property consists of approximately 115,724 square feet of land and is presently improved with the former Randall Junior High School, an historic landmark listed in the D.C. Inventory of Historic Places. The approved PUD includes plans to redevelop the site to establish a new campus for the Corcoran College of Art and Design ("Corcoran") and construct a new multi-family residential building consisting of approximately 440-490 units. The PUD would have an overall density of 4.32 floor area ratio ("FAR"), with approximately 100,000¹ square feet of building space (76,043 square feet of gross floor area) devoted to the Corcoran College of Art and Design. The order became effective on March 21, 2008, and pursuant to 11 DCMR § 2408.8, will expire on March 21, 2010, unless an application is filed for a building permit.
2. By Order No. 07-13A and effective September 26, 2008, the Commission approved a modification to the PUD to allow construction of the project in phases. The modification order did not alter the expiration of the original PUD order.

¹ The Corcoran School of Art will occupy a total of approximately 100,000 square feet of space, a portion of which is below grade and does not count toward FAR.

3. By letter dated and received by the Commission on December 30, 2009, the Applicant filed a request to extend the validity of the PUD approval for a period of two years, such that an application must be filed for a building permit for the PUD no later than March 21, 2012, and construction must start no later than March 21, 2013. The letter also requested that the validity of Order No. 07-13A be extended. The Applicant served all parties to the original PUD proceeding with a copy of the extension request.
4. The Applicant stated in its letter that, as a result of the crippled economic market, it lost its development partner in Fall 2008. Since that time, the Applicant has been searching for a new development partner and retained a commercial real estate brokerage firm to explore prospects for redevelopment or sale of the Randall School site. Approximately seven potential developers expressed an interest in the project, and an extensive interview process ensued. The PUD extension is necessary to allow the negotiations to proceed and provide certainty to potential lenders that the PUD approvals, including construction phasing, will not expire during the time it takes to restructure the development team, obtain financing, and construct the project.
5. By report dated January 29, 2010, the Office of Planning (“OP”) recommended approval of the PUD extension request. OP determined, and the Commission so finds, that there were no material changes to the facts upon which the Commission relied in approving the original PUD. OP concluded that the Applicant met the criteria set forth in 11 DCMR §§ 2408.10 and 2408.11.
7. Advisory Neighborhood Commission (“ANC”) 6D, the ANC within which the Subject Property is located, was automatically a party in the instant case, as well as the original and subsequent PUD cases. The Applicant served the ANC with a copy of the extension request and the ANC was provided at least 30 days to respond.
8. By letter dated January 19, 2010, the ANC recommended that the Commission approve the PUD extension. The ANC also requested the Commission to include as a condition of the PUD extension order the terms of a private agreement between the ANC and the Applicant.

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 and all parties are allowed 30 days to respond; (b) there is no substantial change in any 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; and (c) substantial evidence demonstrates that there is good cause for the extension based on the criteria established in § 2408.11. (11 DCMR § 2408.10.) The three criteria under § 2408.11 are: (a) an inability to obtain sufficient project financing for the PUD, following an applicant’s good faith efforts to

obtain such financing, because of changes in economic and market conditions beyond the applicant's 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. (11 DCMR § 2408.11.)

Based upon the findings of fact described above, the Commission concludes that the Applicant has met its burden of proof. The Applicant has demonstrated its inability to obtain sufficient project financing for the PUD, following its diligent good faith efforts to obtain such financing through a new development partner and as a direct result of the negative changes in economic and market conditions beyond its control.

The Commission further concludes that there is no material factual conflict that has been generated by the parties that would require a hearing under § 2408.11.

The Commission accords the views of the ANC the "great weight" to which they are entitled pursuant to D.C. Official Code § 1-309.10(d)(3)(A). However, because the ANC did not identify any material change to the facts upon which the Commission based its original approval of the PUD, the Commission concludes there is no basis for imposing new conditions in the PUD order. The private agreement was proffered as a public benefit of the PUD. The promises it contains were not made by the developer, who has now abandoned the project, but only by Corcoran Galley of Art. The ANC does not contend that there has been a breach and therefore the public benefit remains.

DECISION

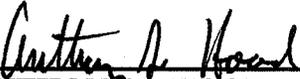
In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of Z.C. Case No. 07-13B for a two-year extension of the validity of Zoning Commission Order Nos. 07-13 and 07-13A. The final PUD approved by the Commission shall be valid until March 21, 2012, within which time an application shall be filed for a building permit, as specified in § 2409.1. Construction shall start no later than March 21, 2013.

For the reasons stated above, the Commission concludes that the Applicant has met its burden; it is hereby **ORDERED** that the request be **GRANTED**.

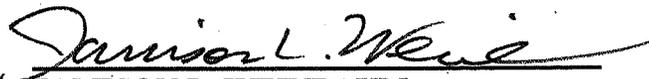
On February 22, 2010, upon a motion made by Commissioner Turnbull, as seconded by Commissioner May, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt).

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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*; that is, on March 19, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 07-13B

As Secretary to the Commission, I hereby certify that on MAR 17 2010 copies of this Z.C. Order No. 07-13B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|---|---|
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(Alan Bergstein) |

ATTESTED BY:

A handwritten signature in black ink that reads "S. S. Schellin".

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning