GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-03B
Z.C. Case No. 10-03B
Parcel Seven Associates, LLC
(One-Year PUD Time Extension @ Square 912)
January 11, 2016

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on January 11, 2016. At the meeting, the Commission approved a request on behalf of Parcel Seven Associates, LLC ("Applicant") for a one-year extension of time in which to start construction of a mixed-use project composed of retail and residential uses, which was approved in Z.C. Order No. 10-03, and extended in Z.C. Order No. 10-03A.

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 ("Property"). The Property is 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 and is located in the northeast quadrant of the District. The Property is located on the south side of H Street, N.E., between 8th and 10th Streets, and is 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 density 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. The above-referenced improvements collectively referred to herein as the "Project."

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4. Pursuant to Z.C. Order No. 10-03, the Commission granted consolidated PUD approval for the Project. The Order became effective upon publication in the *D.C. Register* on January 14, 2011, and required the Applicant to file a building permit application for the Project no later than January 14, 2013, with construction to begin no later than January 14, 2014.

5. On December 4, 2012, the Applicant filed an application for a two-year extension of the time period in which to file a building permit application for the Project. Pursuant to Z.C. Order No. 10-03A, the Commission granted the two-year extension, which required the Applicant to file a building permit application for the Project no later than January 14, 2015, with construction to begin no later than January 14, 2016.

6. Consistent with Z.C. Order No. 10-03A, the Applicant filed a building permit application for the Project prior to January 14, 2015.

7. On December 8, 2015, the Applicant filed an application for a one-year extension of the time period in which to start construction of the Project, such that construction must begin no later than January 14, 2017.

8. The Office of Planning ("OP") submitted a report dated December 15, 2015, indicating that the application meets the standards of 11 DCMR §§ 2408.10 and 2408.11. OP thus recommended that the Commission approve the requested one-year PUD extension. (Exhibit ["Ex."] 5.)

9. Advisory Neighborhood Commission ("ANC") 6A submitted a letter dated October 9, 2015, indicating that at its regularly scheduled, duly noticed meeting of October 8, 2015, ANC 6A voted to support the requested extension. (Ex. 1C.)

10. As to the merits, the Applicant submitted evidence of factors beyond its reasonable control that rendered the Applicant unable to comply with the time limits of Z.C. Order No. 10-03A. The Applicant filed a raze permit application (Cap ID No. R1500147), and has already been granted raze approvals from the District Department of Transportation ("DDOT"), Rental Accommodation, Zoning Review, Historic Preservation, and DC Water. However, due to the Applicant's existing retail leasing obligations at the Property, the Applicant is unable to obtain the additional required raze permits that would permit demolition of the existing structures on the Property and facilitate construction of the Project prior to January 14, 2016. The Applicant provided written testimony that it worked diligently with the retailers in operation at the Property to renegotiate their leases that extended beyond 2016 and/or to provide for relocation services in a manner feasible to all parties, such that all existing buildings on the Property would be vacant by December 31, 2015.

11. The Applicant also submitted evidence of the steps that it took to move forward with the Project, including the following:

    a. In the summer of 2014, the Applicant selected its residential development partner and architect, and commenced the full design process for the PUD;

    b. The Applicant executed a First Source Employment Agreement with the District's Department of Employment Services ("DOES");

    c. On September 22-24, 2014, and September 29 through October 10, 2014, respectively, the Applicant completed extensive environmental and geotechnical due diligence at the Property;

    d. On November 26, 2014, the Applicant submitted an initial service application to Washington Gas regarding utility distribution systems for the Project. The Applicant submitted an updated application on November 11, 2015;

    e. On January 9, 2015, the Applicant submitted a foundation-to-grade permit application to the District Department of Consumer and Regulatory Affairs ("DCRA") (Permit Tracking No. FD 1500034);

    f. On February 17, 2015, the Applicant submitted an initial service application to Pepco regarding utility distribution systems for the Project. The Applicant submitted an updated application on October 30, 2015;

    g. On April 4, 2015, the Applicant conducted a Preliminary Design Review Meeting ("PDRM") with DDOT;

    h. On July 2 and October 28, 2015, the Applicant submitted water and sewer plans to DC Water for approval (Tracking No. 15-270844);

    i. On August 5, 2015, the Applicant recorded the required PUD Covenant for the Project (Instrument No. 2015079869);

    j. On September 10, 2015, the Applicant submitted its construction drawings for third-party review, to which it received substantive comments;

    k. On September 15, 2015, the Applicant submitted an application to DDOT for public space improvements for the Project (DDOT Tracking No. 116048);

    l. On September 17, 2015, the Applicant received a No Further Action letter from the Department of Energy and Environment ("DOEE"), following its submission of an Environmental Impact Screening Form (EISF # 15-00616);

m. On October 6, 2015, the Applicant engaged a general contractor, WCS Construction, LLC, via the issuance of an RFP for Support of Excavation and Dewatering scopes of work;

n. On October 8, 2015, the Applicant presented the PUD extension request to ANC 6A, which voted unanimously (7-0) to support the application;

o. On October 16, 2015, the Applicant received approved demolition plans from DC Water;

p. On October 19 and 28, 2015, the Applicant submitted a response to the initial set of comments from the third-party reviewer;

q. On November 5, 2015, the Applicant awarded bids for support of excavation and dewatering via a Notice to Proceed sent to its general contractor, WCS Construction, LLC;

r. On November 11, 2015, the Applicant engaged a general contractor, WCS Construction, LLC, via the issuance of an RFP for demolition, environmental abatement associated with demolition, rodent abatement associated with demolition, excavation, wet utility installation, and site fencing;

s. On November 12, 2015, the Applicant presented a safety and security plan to ANC 6A and committed to continually work with the community as security and safety issues evolve over the life of the Project;

t. On November 12, 2015, the Applicant presented the public space improvements for the Project to ANC 6A, which voted unanimously (6-0) to support the proposed improvements (DDOT Tracking No. 116048); and

u. The Applicant presented the Project's public space plan to DDOT's Public Space Committee.

12. The Commission finds that despite the Applicant's diligent, good faith efforts, to move forward with the Project, construction of the Project cannot begin at this time. Given the time and process involved in addressing the retail leases for tenants on the Property, and given that several tenants did not vacate the Property until December 31, 2015, the Commission finds that the Applicant is unable to obtain all required raze permits to demolish the existing structures and begin construction prior to January 14, 2016. Although the Applicant has already been granted raze approvals from DDOT, Rental Accommodation, Zoning Review, Historic Preservation, and DC Water, the outstanding raze approvals cannot be obtained until the existing structures on the Property are entirely

vacant. The Commission further finds that even after the structures are vacated, the regulatory process for obtaining a raze permit can still take many months, thus necessitating a one-year extension to begin construction. Therefore, the Commission finds that this extension request satisfies the sole criterion for good cause shown as set forth in 11 DCMR § 2408.11(c).

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 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 11 DCMR § 2408.11. (*See* 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 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 October 9, 2015, ANC 6A indicated that at its regularly scheduled, duly noticed meeting of October 8, 2015, ANC 6A voted to recommend that the Commission grant the one-year extension requested by the Applicant, such that construction must begin no later than January 14, 2017. The Commission carefully considered the ANC's recommendation in its deliberations and has given ANC 6A's recommendation great weight in approving this application.

4. 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.

5. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(c). Specifically, the Applicant has been unable to obtain outstanding raze approvals due to leasing obligations at the Property and the timing of the regulatory permit process, and is therefore unable to comply with the time limits set forth in Z.C. Order No. 10-03A.

6. 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 11 DCMR § 2408.11. 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 11 DCMR § 2408.11.

7. 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 one-year time extension of the validity of Z.C. Order No. 10-03A, such that construction of the Project must begin no later than January 14, 2017.

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 11, 2016, upon the motion made by Commissioner Turnbull as seconded by Chairman Hood, the Zoning Commission **APPROVED** the application and **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 approve and adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on February 19, 2016.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING