

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-10A
Z.C. CASE NO. 13-10A
ZP GEORGIA, LLC
(Time Extension – Consolidated PUD @ Square 2892)
June 27, 2016

Pursuant to notice, a public meeting of the Zoning Commission of the District of Columbia (“Commission”) was held on June 27, 2016. At the meeting, the Commission approved a request on behalf of ZP Georgia, LLC (“Applicant”) for a two-year extension of the 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. 13-10.

FINDINGS OF FACT

1. Pursuant to Z.C. Order No. 13-10, effective June 27, 2014, the Commission approved applications for a consolidated planned unit development ("PUD") and related Zoning Map amendment from the GA/C-2-A Zone District to the GA/C-2-B Zone District for a mixed-use retail and residential project at Lots 102, 103, 104, 105, 879, and 910 in Square 2892 (“Subject Property”). Z.C. Order No. 13-10 required that an application for a building permit must be filed no later than June 27, 2016, and that construction must begin no later than June 27, 2017.
2. The approved PUD includes approximately 96,000 square feet of gross floor area devoted to residential uses (105 units, plus or minus 10%) and approximately 3,816 square feet of gross floor area devoted to retail uses. A minimum of eight percent of the building's residential gross floor area was required to be set aside as Inclusionary Zoning (“IZ”) units, consistent with Chapter 26 of the Zoning Regulations. The building was approved with a maximum height of 87 feet. Thirty-six on-site parking spaces were approved to be located in a below-grade parking garage.
3. By letter dated May 25, 2016, the Applicant submitted a request to the Commission for a time extension of Z.C. Order No. 13-10, such that a building permit application must be filed no later than June 27, 2018, and construction must begin no later than June 27, 2019. The Applicant’s request was supported by documentation describing a lawsuit against the Applicant regarding development of the Subject Property. The lawsuit was filed on June 17, 2014 in the Superior Court of the District of Columbia by an individual that participated as a party in opposition in Z.C. Case No. 13-10. As a result of the pending litigation, the Applicant suspended all development work pending resolution of the lawsuit.

4. The trial for the lawsuit concluded on May 23, 2016, by the Court dismissing the case, subject to a 30-day appeal period.¹ On May 25, 2016, the Applicant submitted its request for a time extension of the PUD. The request was supported by the Office of Planning (“OP”) and Advisory Neighborhood Commission (“ANC”) 1A. (Exhibit [“Ex.”] 4, 5.) The Applicant indicated in its request that following resolution of the lawsuit it would be able to move forward with preparing construction drawings, obtaining bids from general contractors, and taking other steps necessary to develop the Subject Property in accordance with Z.C. Order No. 13-10. The Applicant also indicated that it would be able to file a building permit application for the project by June 27, 2018 and begin construction by June 27, 2019.
5. Pursuant to 11 DCMR § 2408.10, the Commission is authorized to extend time periods set forth in 11 DCMR §§ 2408.8 and 2408.9, provided the following conditions are met: (a) the extension 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 of the material facts upon which the Commission based its original approval of the planned unit development 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.
6. The sole substantive criterion for determining whether a PUD should be extended is whether there exists "good cause shown." The Zoning Regulations define "good cause shown" in 11 DCMR § 2408.11, as evidence of one or more of the following: (a) an inability to obtain sufficient project financing for the planned unit 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 planned unit development by the expiration date of the planned unit development 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 planned unit development order.
7. As a result of the litigation process that was outside of the Applicant's reasonable control, the Commission finds that the Applicant has shown that it is unable to comply with the time limits set forth in Z.C. Order No. 13-10. Accordingly, the Commission concludes that this request for a time extension satisfies the sole criterion for good cause shown as set forth in 11 DCMR § 2408.11(c).

¹ The Commission takes notice that on June 21, 2016, the plaintiff filed a Notice of Appeal to the Court of Appeals for the District of Columbia.

8. Other than the Applicant, the only party to this case was ANC 1A. As indicated on the Certificate of Service, the Applicant served the PUD extension request on ANC 1A on May 25, 2016. (Ex. 1.)
9. ANC 1A submitted a resolution to the record dated June 21, 2016, indicating that at its June 8, 2016 public meeting, at which notice was properly given and a quorum was present, ANC 1A voted 8-0-0 to support the Applicant's request for an extension of the approved PUD, such that a building permit application must be filed by June 27, 2018 and construction must commence by June 27, 2019. (Ex. 5.)
10. OP submitted a report to the record dated June 17, 2016, stating that as a result of the lawsuit, the Applicant was unable to move forward with the project due to circumstances beyond its control. OP thus recommended that the Commission approve the requested two-year PUD extension. (Ex. 4.)

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 approval, provided: (a) the extension 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 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; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in 11 DCMR § 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 planned unit development order.
2. The Commission concludes that the Applicant complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the request and allowing them 30 days to respond.
3. The Commission concludes that there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD. The Commission finds that the Applicant remains committed to moving forward with developing the project and fully complying with the conditions and obligations imposed as part of the original PUD order.

4. The Commission concludes 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 Commission finds that the Applicant provided substantial evidence that the project has experienced delay beyond the Applicant's control due to the existence of litigation against the Applicant regarding development of the Subject Property.
5. 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 affected ANC's written recommendations. ANC 1A submitted a resolution in support of the requested extension. (Ex. 5.) The Commission carefully considered the report and has given ANC 1A's recommendation great weight in approving this request.
6. 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's recommendations. OP submitted a report recommending the Commission approve the requested extension. (Ex. 4.) The Commission carefully considered OP's report and has given OP's recommendation great weight in approving this request.
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 11 DCMR § 2408.11. The Commission concludes that 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.
8. 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

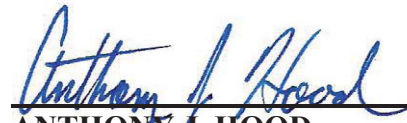
In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of Z.C. Case No. 13-10A, such that an application for the building approved pursuant to Z.C. Order No. 13-10 must be filed no later than June 27, 2018, and construction of the building must begin no later than June 27, 2019.

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 June 27, 2016, upon the motion made by Commissioner Turnbull, as seconded by Vice Chairperson Cohen, 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).

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 October 7, 2016.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING