

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER No. 15-16(1)
Z.C. Case No. 15-16
B&R Associates and MRP 600 RI, LLC
(Extinguishment of PUD @ Square 3629, Lots 7, 813, and 814)
October 22, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public meeting on October 25, 2018, to consider a request of B&R Associates and MRP 600 RI, LLC, property owners (collectively, the “Applicant”) to extinguish an approved planned unit development (“PUD”) for property located in Lots 7, 813, and 814 of Square 3629 (“Property”). The Commission considered the request pursuant to Subtitle X § 310.2(b) of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The Commission granted the request.

FINDINGS OF FACT

1. The Property consists of Lots 7, 813, and 814 in Square 3629 and is located at 524-528 and 600-602 Rhode Island Avenue, N.E. (Exhibit [“Ex.”] 106, p. 1.)
2. The Commission took final action to approve a consolidated and first-stage PUD for the Property at its public meeting on October 17, 2016. More specifically, the Commission approved a consolidated PUD for Phase I (Buildings 1A, 1B, and 5B) and a first-stage PUD for the remaining phases (Buildings 2A, 2B, 3, 4, 5A, and 6). (Ex. 106, p. 1.)
3. Z.C. Order No. 15-16 (“Order”), approving the PUD, was published in the *D.C. Register* on December 9, 2016. (Ex. 106, p. 1.)
4. The Order was subsequently appealed to the District of Columbia Court of Appeals by the Ward 5 Alliance for Equity on January 4, 2017. This appeal is still pending before the Court of Appeals. (Ex. 106, p. 1.)
5. No PUD Covenant has been recorded against the Property. But for the appeal, the Order would otherwise expire on December 9, 2018. (Ex. 106, pp. 2-3.)
6. In light of the uncertainty of being able to proceed with development of the Project due to the appeal, the Applicant filed a large tract review application on April 11, 2017, with the Office of Planning (“OP”) for review of a matter-of-right project. The project reviewed by OP through the large tract review process proposed a similar site plan and mix of uses; however, it no longer benefited from the additional height and flexibility afforded by the PUD process. Nevertheless, the project continued to provide many of the same benefits and amenities proffered during the PUD process. (Ex. 106, pp. 1-2.)

7. During the large tract review process, OP referred the application to Department of Housing and Community Development, Department of Energy and the Environment, Department of Transportation, Fire and Emergency Medical Services Department, and DC Public Schools for review and comment. OP also referred the application to ANC 5E during the large tract review process for review comment. OP extended the deadline for review at the request of the ANC and Ward 5 Alliance for Equity. (Ex. 106, p. 2.)
8. OP issued its final report on the large tract review project on July 31, 2017, concluding that the application satisfied the goals of the large tract review process.
9. The property owners have since filed an application for building permits for the first phase of development, which still includes Buildings 1A, 1B, and 5B, similar to what was approved in the PUD. Building permits cannot be issued for the work until the PUD is extinguished. (Ex. 106, p. 2.)
10. On September 13, 2018, the Applicant filed a motion to extinguish the PUD pursuant to Subtitle X § 310.2 in order to allow for matter-of-right development on the Property.
11. The Commission considered the modification request at its public meeting on October 25, 2018.
12. The PUD did not include a PUD-related map amendment; accordingly, the Property is located in the MU-7 zone.

CONCLUSIONS OF LAW

1. The PUD process is designed to encourage high quality developments that provide public benefits. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project offers a commendable number or quality of public benefits and that it projects and advances the public health, safety, welfare and convenience.
2. The Commission concludes that once a consolidated PUD is approved, any future on the PUD site must be in accordance with the approved plans for so long as the PUD remains in effect. If a property owner wishes to proceed with matter-of-right development on the site, it must request the complete extinguishment of the PUD. The Commission is authorized to grant such a request upon motion by the Applicant and further deliberation regarding such request is not required.
3. The Commission notes that a PUD approval is an entitlement not an obligation. The Commission cannot compel the Applicant to build the Project. The Applicant could achieve the same ends of pursuing a matter-of-right project by allowing the approval to lapse pursuant to Subtitle X § 310.2(a); however, the Commission does not believe that allowing the Property to sit underutilized for an extended period of time until the PUD lapses serves the community or the District.

4. For each of the reasons stated in Z.C. Order No. 15-16, the Commission finds that the Comprehensive Plan, including the Upper Northeast Area Element, the Future Land Use Map, and the Diamond in the District Small Area Plan encourage development, including residential uses.
5. The Commission notes that the project to be constructed has been reviewed by District agencies and the community so while it is considered a “matter-of-right” development, the District and the community have had more opportunity to influence the development during the large tract review process than a true “matter-of-right” development, which does not solicit input from District agencies or the community.
6. The Commission finds it to be in accordance with the Regulations to allow the property owner to proceed with the development on the Property in a manner consistent with requirements and restrictions of the Zoning Regulations. As such, the request to extinguish the PUD does not warrant a hearing.

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 request of the Applicant in Case No. 15-16 for the extinguishment and rescission of the PUD approved pursuant to Z.C. Case No. 15-16.

For the reasons stated above, the Commission concludes that the PUD shall be extinguished; it is hereby **ORDERED** that the Applicant’s request to extinguish the PUD be **GRANTED**.

On October 22, 2018, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on November 23, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING