

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-32B
Z.C. Case No. 15-32B
1126 9th St NW, LLC
(Time Extension for a Consolidated PUD and Related Map Amendment
@ Square 369, Lot 880 - 1126 9th Street, N.W.)
October 22, 2018

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on October 22, 2018. At that meeting, the Commission approved the request of 1126 9th St NW, LLC (the “Applicant”) for a time extension of the date before which the Applicant must file a building permit application for the consolidated planned unit development and Zoning Map amendment (“Consolidated PUD”), approved by the Commission pursuant to Z.C. Order No. 15-32 (“Original Order”), as subsequently modified by Z.C. Order No. 15-32A (“Modified Order,” collectively, with the Original Order, the “Order”). The Consolidated PUD pertains to 1126 9th Street, N.W. (Lot 880, Square 369) (“Property”). The time extension request was made pursuant to Subtitle Z § 705 of the Zoning Regulations of 2016 (Title 11 DCMR).

FINDINGS OF FACT

1. The Commission approved the Original Order in September 2016 under the procedural and substantive requirements of the 1958 Zoning Regulations because the application for the Consolidated PUD was set down prior to the effectiveness of the 2016 Zoning Regulations. (Exhibit [“Ex.”] 1 at 2, n.1.) In September 2018, the Commission approved a modification of consequence to the Consolidated PUD in the Modified Order. No other modifications or extensions have been requested or approved for the Order.
2. The Property is located at the corner of 9th Street, N.W. and M Street, N.W. immediately across from the Washington Convention Center. (Ex. 1, p. 1.) An existing two-story building that is historically contributing to the Shaw Historic District occupies a portion of the Property along 9th Street, N.W. (*Id.*)
3. The Property is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 2F, Single-Member-District 2F06 in Ward 2. (Ex. 2D, p. 4.)
4. The Original Order became final and effective upon publication in the *D.C. Register* on November 25, 2016. (*Id.* at 19.) The Original Order includes the approval of the

Consolidated PUD and the related Zoning Map amendment, which amend the zoning for a portion of the Property from the DD/C-2-A to the DD/C-2-C Zone District. (*Id.* at 14.)

5. The project authorized under the Consolidated PUD (as modified, the “Project”), as approved by the Commission, is a mixed-use, transit-oriented development, with retail and residential uses. The Project includes a total of approximately 33,697 square feet of gross floor area (“GFA”), which results in a floor area ratio (“FAR”) of 4.4. (Ex. 1, p. 2.) Although not required by the underlying zoning, the Project includes two affordable housing units as part of its package of public benefits and amenities. (Ex. 1D, p. 15.)
6. Pursuant to a condition of the Original Order, the Consolidated PUD approval is valid for two years (that is, until November 25, 2018). (*Id.* at 18.) The Applicant filed an application for a time extension of the Consolidated PUD on September 18, 2018, prior to the expiration of the approval thereof. (Ex. 1, p. 1.) The filing of such extension tolled the expiration of the Consolidated PUD approval.
7. The Applicant and ANC 2F were the only parties to the Consolidated PUD proceedings. (Ex. 1D, p. 11.) A copy of the application materials for this extension request were served on ANC 2F, as demonstrated by the Applicant’s Certificate of Service. (Ex. 1 p. 8.)
8. Through a letter dated October 11, 2018, the Chair of ANC 2F informed the Commission that, on October 3, 2018, at a duly called and properly noticed public meeting with a quorum (present and acting throughout), ANC 2F voted unanimously (6-0) to support the request. (Ex. 3.) The report stated no issues or concerns.
9. There has been no substantial change in the material facts upon which the Commission relied for its original approval of the Consolidated PUD that would undermine the justification for the approval thereof. The Project continues to achieve the goals and policies of the Comprehensive Plan of the District of Columbia and satisfies the PUD evaluation criteria contained in the Zoning Regulations. The modification of consequence to the Consolidated PUD in general only reduces the impacts from the Project as originally approved. (*See* Z.C. Case No. 15-32A; Ex. 1, pp. 2-4.)
10. The Applicant provided substantial evidence that there is good cause for extending the expiration of the Consolidated PUD. The Applicant has been diligently and in good faith pursuing development of the Project. The Applicant has expended significant time and resources to identify development partners and financing to develop the Project. (Ex. 1, pp. 4-6; Ex. 1E.) The Applicant funded a wide variety of expenditures to facilitate the implementation of the Project and provided a detailed list of work and costs funded by the Applicant totaling approximately \$500,000. (Ex. 1E.) The Applicant’s efforts to implement the Project include:
 - (a) Outreach to potential investors or purchasers: Throughout the redesign process, the Applicant conferred with existing investors and presented various iterations of the revised Project to other potential investors;

- (b) Pricing of materials originally approved: The Applicant obtained construction pricing and multiple updates from a qualified general contractor who has a track record of completing successful projects in the DC market;
- (c) Solicitation of or hiring of brokers to finance, sell or lease the original Project: A broker was actively marketing the original Project. Those marketing efforts resulting in several offers to purchase the original Project. The Applicant and its broker evaluated each offer but ultimately each offer was impacted by the same construction cost increases that have contributed to the original Project's delay.

Additionally, the Applicant has initiated the financing process and engaged several lenders to review the original Project, and now the revised Project, subject to final plans and pricing; and

- (d) Hiring of consultants to advance project, including approving architect work on developing construction drawings and similar studies: The Applicant advanced the original Project to schematic design and participated in multiple construction costing exercises in order to identify a program that resulted in a feasible development on the Property in accordance with the Original Order. The Applicant also selected a pre-construction contractor to assist in budgeting and value engineering processes.
11. However, despite the Applicant's work to complete the Project, along with the market and other conditions beyond the Applicant's reasonable control, the Applicant has been unable to file an application for a building permit for the Project within the period required under the Consolidated PUD (i.e., by November 25, 2018). Factors beyond the Applicant's reasonable control that justify the extension include the dramatic increase in construction costs in the 12 to 15 months preceding the filing of the extension application. In addition to construction costs that were already rising, proposed tariffs have had an effect on construction costs. Therefore, the originally proposed concrete and steel building was no longer financially viable to construct. The Project originally included a 100-foot-tall tower element that, on account of the Property's unique site constraints and geometry, had interior layouts that were inefficient relative to typical residential buildings. Taken together these challenges have taken longer to resolve than the Applicant originally anticipated.
12. The Office of Zoning referred the application to the Office of Planning ("OP") on September 24 2018. (Ex. 2.) On October 12, 2018, OP filed a report with the Commission recommending approval of the PUD time extension request until November 25, 2020. (Ex. 4.) OP concluded that the Applicant satisfied the relevant standards of Subtitle Z, § 705. (*Id.*) There were no other documents filed by third parties or persons in the record of this case.

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of Subtitle Z § 705.2 are satisfied. The Applicant has satisfied each of the requisite conditions.

Section 705.2(a) requires that the Applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The only party in the original case was ANC 2F, which was properly served with this time extension request and filed evidence of having unanimously adopted a resolution in support of this request. The Applicant has satisfied all notice requirements.

Section 705.2(b) requires that the Commission find that 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 Consolidated PUD. Based on the information provided by the Applicant and OP, the Commission concludes that extending the time period of approval for the Consolidated PUD is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original Consolidated PUD.

Section 705.2(c) requires that the Applicant demonstrate with substantial evidence one or more of the following criteria:

- (a) An inability to obtain sufficient project financing for the 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 development 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 order.

Based on the substantial evidence placed into the record by the Applicant, as recited above, the Commission concludes that there is good cause shown to extend the period of time in which the Applicant is required to file a building permit application for the Consolidated PUD. The Applicant has worked in good faith to advance the development of the Project. However, numerous factors outside the Applicant's control, including market conditions and construction challenges, require additional time for the Applicant to resolve or design around. The Commission concludes that granting the time extension request until November 25, 2020 is an appropriate amount of time in light of the existing conditions. For these reasons, the Commission finds that the Applicant has satisfied the requirements of § 705.2(c)(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 the issues and concerns raised in the written report of the affected ANC. In this

instance, ANC 2F expressed no issues or concern, but rather indicated its support of the Application. As such, there is nothing to give great weight to.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP's recommendations. OP recommended approval of the time extension request, and the Commission concurs in its recommendation.

DECISION

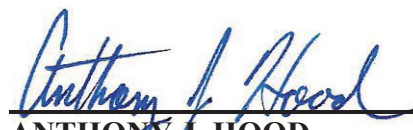
In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a time extension of the Consolidated PUD application approved in Z.C. Order No. 15-32, as modified by Z.C. Order No. 15-32A. The Consolidated PUD approved by the Zoning Commission shall be valid until November 25, 2020, before which time the Applicant will be required to file a building permit application for the Project. Construction of the Project must commence by November 25, 2021.

On October 22, 2018, upon motion by Commissioner Shapiro, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** this application at its public meeting 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 § 604.8 this Order shall become final and effective upon publication in the *D. C. Register* on December 21, 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