

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 03-12K/03-13K

Z.C. CASE NO. 03-12K/03-13K

(Two-Year Time Extension for Planned Unit Development – Square 769, LLC and District of Columbia Housing Authority @ Square 769)

September 27, 2010

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on September 27, 2010. At the meeting, the Commission approved a request from Square 769, LLC and the District of Columbia Housing Authority (collectively the "Applicant") for a time extension for an approved planned unit development ("PUD") for the southern portion of Square 769 to be known as 250 M Street, S.E. (the "Property"), pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

FINDINGS OF FACT

1. Pursuant to Order No. 03-12/03-13, the Commission granted preliminary and consolidated approval for property located in the Southeast quadrant of Washington, D.C. and generally bounded by 2nd Street on the west, 7th on the east, Virginia Avenue on the north, and M Street on the south. The property consists of approximately 927,000 square feet of land area. The approved overall project includes a maximum of 1,747 residential units, 708,302 square feet of office space, 51,000 square feet of retail space, 1,780 off-street parking spaces, and the approved community center building.
2. The overall development as approved pursuant to Z.C. Order No. 03-12/03-13 included the preliminary approval for the office building to be constructed on the southern portion of Square 769 to be known as 250 M Street, S.E.
3. On May 14, 2007, the Commission approved Z.C. Case No. 03-12C/03-13C, granting second-stage approval of the office building. Pursuant to 11 DCMR § 2408.8, an application for a building permit should have been filed by May 14, 2009.
4. The Zoning Commission approved a modification to its second-stage approval of the office building in Z.C. Order No. 03-12F/03-13F ("Order"), which increased the building's gross floor area to approximately 234,182 square feet and increased its maximum height to 130 feet, not including roof structures. The Order became effective upon publication in the *D.C. Register* on September 26, 2008. Condition No. 9 of the Order requires the Applicant

to file an application for a building permit for the office building no later than September 26, 2010. Construction must begin no later than September 26, 2011.

5. By letter dated and received by the Commission on June 29, 2010, the Applicant filed a request to extend the validity of the PUD approval for a period of two years. The request, would require that an application for a building permit for the office building must be filed no later than September 26, 2012, and construction must be started no later than September 26, 2013. The Applicant's request was supported by a letter from the Applicant's financial mortgage broker setting forth details of the Applicant's inability to obtain project financing, and a letter from the Applicant's leasing broker setting forth details of the broker's efforts to market the approved building to potential tenants.
6. The Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. The Applicant's mortgage broker indicated that it submitted financing requests to several lenders including Wachovia (now Wells Fargo), CityFirst Bank, BB&T Bank, Bank of America, SunTrust, and Local Initiatives Support Corporation. However, no lender thus far has been interested in financing the proposed office building "on-spec," and lenders are now requiring buildings to be at least 70% pre-leased prior to making loan commitments. The Applicant also indicated that in 2009, the Applicant explored the opportunity to utilize New Market Tax Credits to finance the project with the requirement of leasing the building to several non-profits. However, after several months of negotiations the tenants decided to remain in their current location and the deal collapsed. The Applicant also submitted a letter from its leasing broker indicating that since the project was initially approved, the company has worked to rebrand the building to "250 M at Canal Park" to give the building a sense of identity and differentiate it from competitors by recognizing the proximity to the future Canal Park. The leasing broker indicated that it has also created brochures, a website, and other marketing materials to distribute to potential tenants.
7. The Commission finds that the real estate market has been subject to, and continues to suffer from, severe financing, construction, sales and other impediments. This major change in the real estate market has rendered it practically impossible for the Applicant to obtain project financing, despite the Applicant's good faith efforts. Based upon the supporting materials included with the Applicant's extension request, the Applicant has been unable to obtain project financing for the approved PUD project from the numerous lending institutions it contacted. Thus, the project cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control. Therefore, the Commission finds that this extension request satisfies the sole criterion for good cause shown as set forth in § 2408.11(a) of the Zoning Regulations.
8. On June 29, 2010, the Applicant served a copy of the request on Advisory Neighborhood Commission 6D ("ANC 6D"), which was the only other party to this case. ANC 6D

submitted a letter, dated September 22, 2010, in support of the requested extension. (Exhibit 6.)

9. The Office of Planning ("OP") submitted a report dated September 17, 2010 (Exhibit 5) indicating that the Applicant meets the standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations. OP thus recommended that the Commission approve the requested two year PUD extension.
10. Because the Applicant demonstrated good cause with substantial evidence pursuant to § 2408.11(a) of the Zoning Regulations, the Commission finds that the request for the two-year time extension of the approved PUD should be granted.
11. Based on the OP report and the photographs included therein, the Commission finds that there has been no detrimental change in the condition of the Property since approval of the PUD that would indicate that the application should not be granted.

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 § 2408.11. (11 DCMR § 2408.10.) Section 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 concludes there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.

4. The Commission is required under § 13(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)) to give great weight to the affected ANC's recommendations. ANC 6D submitted a letter in support of the requested extension. (Exhibit 6). The Commission has given ANC 6D's recommendation great weight in approving this application.
5. 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 standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations, and therefore recommended that the Commission approve the requested extension. (Exhibit 5.) The Commission has given OP's recommendation great weight in approving this application.
6. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11(a). Specifically, the Applicant has been unable to obtain sufficient project financing for the PUD, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.
7. Section 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 § 2408.11.
8. 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 § 2408.11 of the Zoning Regulations.
9. 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 two-year time extension of for the approved planned unit development ("PUD") for the southern portion of Square 769 to be known as 250 M Street, S.E. approved in Zoning Commission Case No. 03-12C/03-13C as modified in Zoning Commission Case No. 03-12F/03-13F. The project approved and modified by the Commission shall be valid until September 26, 2012, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than September 26, 2013.

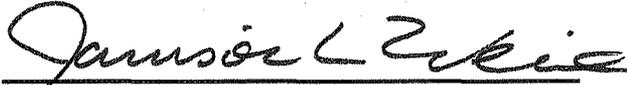
In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. (Act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On September 27, 2010, upon the motion made by Chairman Hood as seconded by Commissioner Turnbull, the Zoning Commission approved this application and adopted this Order by a vote of 4-0-1 (Anthony J. Hood, Greg Selfridge, Michael G. Turnbull, and Peter G. May (by absentee ballot) to adopt; Konrad S. Schlater not having participated, not voting).

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 November 26, 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.: 03-12K/03-13K

As Secretary to the Commission, I hereby certify that on **NOV 24 2010** copies of this Z.C. Order No 03-12K/03-13K were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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|----|--|----|--|
| 1. | <i>D.C. Register</i> | 4. | Councilmember Tommy Wells |
| 2. | Wayne Quin, Esq.
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| | | 8. | Office of the Attorney General (Alan Bergstein) |

ATTESTED BY:

A handwritten signature in black ink, appearing to read "S. S. Schellin", is written over a horizontal line.

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