GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 04-19A
Z.C. Case No. 04-19A
(Extension of the Consolidated Planned Unit Development and Area Variances at 5000 Overlook Avenue, S.W. – Consisting of a Part of Parcel 253)
May 14, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on November 18, 2004, to consider an application from the District of Columbia Water and Sewer Authority ("WASA" or "Applicant") for consolidated review and approval of a Planned Unit Development ("PUD") and an area variance regarding height of structures, pursuant to Chapters 1, 8, 24, and 31 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022 for contested cases. The vote on the variance application was deferred until the date when the final action on the PUD would be considered. The Commission approved the variance application and took action to approve the PUD application on January 13, 2005. The Zoning Commission voted at its March 14, 2005 public meeting to re-open the record to accept recommendations of the Commission of Fine Arts ("CFA") and voted to approve the design changes shown in revised elevations to conform to the CFA's design recommendations. By Order No. 04-19 the Commission granted approval of these applications. Pursuant to 11 DCMR § 3028, Order No. 04-19 became final and effective on May 27, 2005.

The Commission is authorized, pursuant to the provisions of 11 DCMR § 2408.10, to extend the validity of PUD approvals for good cause shown upon a request made before the expiration of the approval. Section 2408.11 provides that an extension of the validity of a PUD may be granted by the Commission for good cause if an applicant has demonstrated with substantial evidence one or more of the following criteria: (a) an inability to obtain sufficient 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.

By letter dated and received by the Commission on March 29, 2007, WASA filed a request to extend the validity of the PUD approval, the area variance regarding the height of various structures, and the design revisions, all granted pursuant to Order No. 04-19, for a three (3) year period prior to filing an application for a building permit.

In the letter, WASA pointed to the criteria set out in § 2408.11 in support of its request for an extension. Pursuant to this section, WASA must demonstrate "with substantial evidence… an inability to obtain sufficient financing for the PUD, following an applicant's diligent good faith efforts to obtain financing, because of changes in economic or market conditions beyond the applicant's reasonable control." WASA's letter set out the basis for the extension request pursuant to these criteria, as discussed below:

The Applicant, pursuant to industry standards and accepted methods, calculated the cost of constructing eight (8) egg-shaped digesters, four (4) gas storage tanks (silos), and smaller auxililiary buildings and structures including a digester gas building, two (2) electrical control buildings, two (2) gas holders, and up to three (3) enclosed waste gas flares (together the "Facility") to treat the biosolids produced at its advanced Wastewater Treatment Plant, commonly referred to as Blue Plains (the "Plant"). The Applicant further structured the work on the Facility in phases with the intent to let two contracts. The Applicant's FY 2006 Budget reflected an amount sufficient to cover the estimated amount for the first phase of the Facility work ($181,050,000). While a number of contractors had indicated an interest in performing the Facility work, the Applicant ultimately received only one bid. This bid was substantially over budget (approximately 70%) as a result of changes in economic and market conditions beyond the Applicant's control. Such conditions included abnormal spikes in commodity prices, such as steel and concrete (the egg shaped digester structures consist mainly of concrete and steel). These abnormal spikes are illustrated by such well recognized indices as the Producer Price Index Metal Tanks (heavy gauge) Manufacturing Index, the Ready–Mixed Concrete Manufacturing Index, and the Engineering News Record (ENR) Construction Cost Index. Additionally, energy price increases were seen both regionally and nationally in the construction industry.

In addition to such global and national trends, the regional construction market was very active at that time. Contractors were having difficulty getting skilled labor. Rental equipment was limited and at a premium. Construction firms that were specializing in water and wastewater work were especially busy at that time.

Certain project specific factors also affected the cost of the Facility. As of February 2006, five (5) major contractors showed an interest in the project. Subsequently four (4) of them declined to bid and gave such reasons as (i) limited resources, (ii) concerns with the schedule and length of the contract, (iii) the high level of project complexity and risk, and (iv) the effect such contract would have on bonding capacity. WASA made an effort to address the bonding concerns expressed at the time. However, as a result of Hurricane Katrina and other disasters, surety companies, in an industry-wide effort to minimize risk, now found certain previously acceptable requirements to be unacceptable. This was especially true of complex, lengthy projects.

In addition to the above-listed concerns voiced by prospective bidders, there was limited competition for a project of this type. The egg-shaped structures require double rolled plates, which are a specialized activity. Extremely large tower cranes are required to construct the egg-shaped digesters and a limited number were available in the region at that time.

The estimated amount of the second contract also substantially increased. The nature of the Facility phasing is such that once the first phase is completed, the second phase is required to be constructed. WASA did not, as a result of such events, have the funding available to undertake the first phase of the Facility work.

As a result of the bidding experience on the first phase, WASA determined it was in the best interest of WASA's ratepayers and wholesale customers to delay the construction of the Facility in order to undertake monitoring and analysis of both construction commodity costs and market conditions.

The District of Columbia Office of Zoning referred this matter to the District of Columbia Office of Planning ("OP") for analysis and recommendation. By memorandum dated March 30, 2007, OP recommended approval of the requested three-year extension of Zoning Commission Order No. 04-19.

The Commission concurs with OP that the Applicant has demonstrated good cause and that an extension of time of the validity of the PUD is in the best interests of the District of Columbia and is consistent with the intent and purposes of the Zone Plan.

In consideration of the reasons set forth in this Order, the Zoning Commission for the District of Columbia hereby orders that the validity of Zoning Commission Order No.04-19 be extended for a three-year period (May 27, 2010) prior to the filing of an application for a building permit. Construction must begin within a year thereafter.

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, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, 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. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

This Order was adopted by the Zoning Commission at its public meeting on May 14, 2007, by a vote of

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 OCT 2 6 2007.

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

Government of the District of Columbia
Office of Zoning

Z.C. CASE NO.: 04-19A

As Secretary to the Commission, I herby certify that on OCT 22 2007 copies of this Z.C. Order No. 04-19A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
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7. Councilmember Marion Barry
8. Office of Planning (Harriet Tregoning)
9. Ken Laden, DDOT
10. Acting Zoning Administrator (Matt LeGrant
11. Office of the Attorney General (Alan Bergstein)

ATTESTED BY: Sharon S. Schellin
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning