

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-15B
Z.C. Case No. 05-15B
(RIK DC Investments, LLC – Two-Year PUD Time Extension @ Square 775, Lot 50)
February 22, 2010

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the “Commission”) was held on February 22, 2010. At the meeting, the Commission approved the request of RIK DC Investments, LLC, (the “Applicant”) for a two-year time extension of the consolidated review and approval of a planned unit development (“PUD”) for Square 775, Lot 50, commonly referred to as 318 I Street, N.E. (“Property”). The request was made pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations. The Commission determined that this request was properly before it under the provisions of § 2408.10 of the Zoning Regulations.

FINDINGS OF FACT

1. By Zoning Commission Order No. 05-15 the Commission approved a residential PUD with 125-140 units and 160,000 square feet of gross floor area, including 9,120 square feet of affordable housing. The application had the support of the Office of Planning (“OP”) and the Advisory Neighborhood Commission (“ANC”) 6C. The ANC, which was automatically a party, was the only other party to this case. The approval became effective on July 21, 2006. Condition 8 of the Order provided that it would be valid for a period of two (2) years from the effective date, and construction of the project must start within three (3) years of the effective date.
2. On July 2, 2007, the property owner filed an application to modify the PUD to, *inter alia*, permit 166-180 residential units. The gross floor area remained at approximately 160,000 square feet and the development included approximately 9,186 square feet of affordable housing. The Commission approved the modifications requested by the Applicant in Zoning Commission Order No. 05-15A, which became effective on May 16, 2008. Condition 9 of this order provided that the PUD would be valid for a period of two (2) years of this effective date, and that construction of the project must start within three (3) years of the effective date. The ANC, which was automatically a party, was the only other party to this case.
3. The Property was subsequently transferred through a foreclosure sale to the Applicant in July 2009. The Applicant studied the site to determine the feasibility of constructing the PUD as approved but did not have enough time to complete its analysis and secure building permits prior to the expiration of the PUD. Accordingly, on December 28, 2009,

the Applicant submitted an application with the Commission requesting a two-year extension of the PUD. It simultaneously served OP and the ANC with a copy of the extension request and provided at least 30 days for each to respond to the application.

4. OP submitted a report dated February 1, 2010 in support of the extension requested, specifically stating that the Applicant had met the burden set forth in 11 DCMR § 2408.10.
5. The ANC submitted a letter dated January 19, 2010 in support of the extension requested, provided that the Property is maintained in the meantime.

CONCLUSIONS OF LAW

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 and all parties are allowed 30 days to respond; (b) there is no substantial change in any 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) substantial evidence that there is good cause for the extension based on the criteria established in § 2408.11. (11 DCMR § 2408.10.) The three criteria under § 2408.11 are: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's 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, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order. (11 DCMR § 2408.11.)

The Commission concludes the Applicant 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.

The Commission concludes there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.

The Commission concludes the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(c). Specifically, the Applicant purchased the Property in a foreclosure sale and had limited time to perform an analysis of the feasibility of developing the PUD in the current real estate climate before the expiration of the PUD approval.

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.

The approval of the time extension is not inconsistent with the Comprehensive Plan.

DECISION

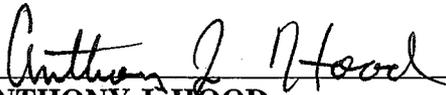
In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of Case No. 05-15B for a two-year time extension of the PUD approval in Zoning Commission Order No. 05-15, as modified by Zoning Commission Order No. 05-15A.

The final PUD approved by the Commission shall be valid until May 16, 2012, within which time an application shall be filed with the District for a building permit. Construction shall start no later than May 16, 2013.

For the reasons stated above, the Commission concludes that the Applicant has met its burden; it is hereby **ORDERED** that the application be **GRANTED**.

On February 22, 2010, upon the motion of Chairman Hood, as seconded by Vice Chairman Keating, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *DC Register* on April 30, 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.: 05-15B

As Secretary to the Commission, I hereby certify that on **APR 28 2010** copies of this Z.C. Order No. 15B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|---|
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ATTESTED BY:

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Secretary to the Zoning Commission
Office of Zoning