

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION ORDER NO. 05-36D
Z.C. Case No. 05-36D
K Street Developers, LLC
(Extension to Approved Planned Unit Development - 250 K Street, N.E.)
November 8, 2010**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the “Commission”) was held on November 8, 2010. At that meeting, the Commission approved an application from K Street Developers, LLC (the “Applicant”) for extension of time to a previously approved planned unit development (“PUD”) and Zoning Map amendment in Lot 67 in Square 749, which is bounded by 2nd, 3rd, K, and L Streets, N.E. (the “Property”), pursuant to Chapter 24 and Chapter 30 of the District of Columbia Zoning Regulations (11 DCMR).

FINDINGS OF FACT

1. By Z.C. Order No. 05-36, effective October 10, 2006, the Commission granted first-stage PUD approval to permit the construction of a two-phase apartment development around an outdoor central plaza, with a total of approximately 702 dwelling units, including 78 units restricted for affordable housing, ground-floor retail, and daycare uses, with a total gross floor area of 850,000 square feet on a site measuring approximately 101,000 square feet. The two phases of the Applicant's overall project are being constructed as a single building for zoning purposes, with the second phase being constructed as an addition to the first phase. At the same time that it granted first-stage approval for the overall project, the Commission granted consolidated approval for the Applicant to move forward with the first phase of the total project. Construction of this first phase has now been timely completed and is in process of being leased and occupied.
2. By Z.C. Order No. 05-36A, effective November 14, 2008, the Commission granted second-stage approval for the project's second phase, consisting of 500 dwelling units (including 50 dedicated affordable housing units) and approximately 14,000 square feet of retail uses to be constructed on the western portion of the Property. The resulting density of the overall project is 7.49 floor area ratio (“FAR”), and the approved height is 121 feet.
3. By Z.C. Order No. 05-36B, also with an effective date of November 14, 2008, the Commission approved minor modification to the first phase of the PUD, to restrict access, for safety purposes, to a small portion of the outdoor plaza to project residents only.

4. By Z.C. Order No. 05-36C, with an effective date of March 5, 2010, the Commission approved minor modification to the PUD to modify the affordable housing proffer slightly to allow prospective tenants to utilize more than 30% of household expenses for payment of rent in order to accommodate arts professionals.
5. By letter dated and received by the Commission October 8, 2010, the Applicant filed a request to extend the validity of the PUD approval for a period of two years, such that a building permit application for the second phase of the PUD must be filed no later than November 14, 2012, and construction must start no later than November 14, 2013. The letter indicates that the basis for extension of the validity of the PUD is as follows:
 - The Applicant has made extensive efforts to engage and secure project financing from a number of potential capital partners, both domestic and foreign. While those interactions have encouraged the Applicant that the recent volatility in the financial markets may be diminishing, especially in the metropolitan DC market, investors have yet to commit to Phase Two of the overall project. The Applicant notes that it continues to work with potential investors to obtain necessary project financing, including the possibility of restructuring the phasing of development of Phase Two.
 - The Project has not changed in any significant form. The use, height, density, and other zoning parameters have not changed. The community benefits proffered have not changed. The only potential change proposed by the Applicant is the above-mentioned restructuring of the phasing of construction of Phase Two, which does not rise to the level of substantial change in material facts that would undermine the Commission's justification for approving the original PUD. The Applicant is not aware of any material factual conflict generated as a result of the PUD.
6. The District of Columbia Office of Zoning referred this matter to the Office of Planning (“OP”) for analysis and recommendation. By memorandum dated October 29, 2010, OP stated its support for approval of the requested time extension.
7. The Commission did not receive a written report by the affected Advisory Neighborhood Commission (“ANC”) 6C. However, the representative of the ANC single member district 6C04 submitted a letter to the Commission dated October 29, 2010, indicating support for the extension and recommending that the Commission approve the requested extension.
8. Pursuant to notice, a public meeting of the Commission was held on November 8, 2010. At the meeting, the Commission considered the request of the Applicant and the recommendations of OP and ANC 6C04.

CONCLUSIONS OF LAW

Pursuant to § 2408.10 of the Zoning Regulations, the Zoning Commission may extend the validity of the PUD approval for good cause shown upon a request made before the expiration of the approval.

Section 2408.10 (a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The Applicant served the only party to the original PUD application, ANC 6C, when it filed the time extension application on October 8, 2010. As noted, no ANC report was received, although the Commission did receive a letter from the Single Member Commissioner for ANC 6C04 expressing support of the time extension request into the record of the case.

Section 2408.10(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 original PUD. The Commission concludes that extending the time period of approval is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original PUD application.

Finally, § 2408.10(c) requires that the applicant demonstrate with substantial evidence that there is a good cause for the proposed extension. Subsection 2408.11 identifies three means by which good cause may be shown, and requires substantial evidence as to each. The first of these is 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." (24 DCMR § 2408 (a).) Upon consideration of the record in this application, the Commission concludes that the Applicant has sufficiently demonstrated an inability to obtain sufficient project financing for the PUD because of changes in economic and market conditions beyond the Applicant's reasonable control.

Section 2408.12 of the Zoning Regulations provides that the Commission shall 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. The hearing shall be limited to the specific and relevant evidentiary issues in dispute. The Commission concludes that there is no material factual conflict in issue and that consideration of the request for extension is appropriate without need for a public hearing.

The Commission concludes 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.

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 recommendations (as discussed in paragraph 6 above). OP recommended approval of the time extension request and the Commission concurs in its recommendation, and therefore gives OP the great weight to which it is entitled.

DECISION

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a two-year time extension of an approved PUD for Lot 67 Square 749, at 250 K Street, N.E. In order for this PUD to remain valid, a building permit application for the second phase¹ of the PUD must be filed not later than November 14, 2012, with construction to commence not later than November 14, 2013.

On November 8, 2010, upon the motion of Commissioner May, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, Greg M. Selfridge, and Michael G. Turnbull to approve).

In accordance with the provisions of § 3028.8 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on May 27, 2011.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

¹ Subsequent to the Commission's decision in this case, the Commission approved a modification to the PUD. See Z.C. Order No. 05-36E, which is being published concurrently with this Order. Among other things, the modification bifurcates the second phase into a Phase II-A and a Phase II-B. For the purposes of this Order, the phrase "a building permit application for the second phase of the PUD" means a building permit application for Phase II-A.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 05-36D/05-36E

As Secretary to the Commission, I hereby certify that on MAY 25 2011 copies of these Z.C. Order Nos. 05-36D & 05-36E 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> | 5. | Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 |
| 2. | Norman Glasgow, Jr.
Holland & Knight
2099 Pennsylvania Ave., N.W.
Suite 100
Washington, D.C. 20006 | 6. | Councilmember Tommy Wells |
| 3. | Karen Wirt, Chair
ANC 6C
P.O. Box 77876
Washington, D.C. 20013 | 7. | DDOT (Karina Ricks) |
| 4. | Commissioner Ann Phelps
ANC/SMD 6C04
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Washington, D.C. 20002 | 8. | Melinda Bolling, Acting General Counsel
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| | | 9. | Office of the Attorney General (Alan Bergstein) |

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