

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 06-14C
Z.C. CASE NO. 06-14C
MidAtlantic Realty Partners, LLC
Two-Year Time Extension for PUD at Florida and New York Avenues, N.E.
(Square 3584, Lot 26)
April 25, 2011

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on April 25, 2011. At the meeting, the Commission approved a request from MidAtlantic Realty Partners, LLC (the "Applicant") for a time extension for an approved planned unit development ("PUD") for Lot 26 (formerly, Lots 23, 811, 812, and 813) in Square 3584 (the "Property"). The Commission considered the request 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. The PUD was originally approved in Z.C. Order No. 06-14 as a mixed-use project that consists of 594,896 square feet of office use; approximately 229,690 square feet of residential use; approximately 120,443 square feet of hotel use; and approximately 7,000 square feet of retail use. Of the residential gross floor area for the project, eight percent is devoted to affordable housing for households with incomes that do not exceed 80% of the area median income ("AMI"). The approved project has a density of 7.06 floor area ratio ("FAR") and a building height of 130 feet. Parking is provided at a parking ratio of 0.6 space per dwelling unit for the residential use; 0.25 space per guest room for the hotel use plus one parking space for each 300 square feet of floor area in either the largest function room or largest exhibit space, whichever is greater; and one parking space for each 1,800 square feet of gross floor area of office use. At least two of the parking spaces are reserved for use by a car-sharing program.
2. The PUD approval was valid, originally, until June 29, 2009. However, pursuant to Z.C. Order No 06-14A, the Commission granted a two-year extension of time for the PUD, extending the approval until June 29, 2011. By that date, it was required that an application be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations, and construction commence no later than June 29, 2012.

4. On May 17, 2010, the Applicant filed Z.C. Case No. 06-14B, seeking a modification of the PUD. Under the modification, the Applicant has the option of: (a) constructing and operating the residential/hotel building proposed in the approved PUD; or (b) eliminating the hotel component of the building and constructing and operating a single apartment building with approximately 346,405 square feet of residential floor area and approximately 5,070 square feet of ground floor retail (the "PUD Modification"). The apartment building has a maximum of 430 dwelling units, and eight percent of the residential floor area is reserved for units for households with incomes that do not exceed 80% of the AMI. The density for the PUD, as modified, is 7.08 FAR.
5. On March 7, 2011, the Commission took proposed action to approve the PUD Modification.
6. By letter dated and received by the Commission on March 11, 2011, the Applicant filed a request to extend the validity of the PUD approval for a period of two years, such that an application for a building permit must be filed no later than June 29, 2013, and construction must commence no later than June 29, 2014.
7. The letter indicates that the project has experienced delay beyond the Applicant's control. In this case, the Property has been cleared and is ready for development. However, due to the real estate market conditions over the past couple of years, the Applicant has been unable to obtain sufficient financing for the construction of the approved PUD. The depressed market conditions also resulted in a significant depreciation of the Property. The Applicant purchased Lots 23 and 811 of the in 2007 for \$52,411,386; but in 2009, according to an appraisal by Millennium Real Estate Advisors, Inc., dated July 1, 2009, the land value for the lots was \$30,650,000. At that time, the Applicant had a loan on the Property equal to \$35 million. Therefore, in order to fund the costs necessary to prepare the Property for construction financing for vertical development, the Applicant was forced to bring in a new capital partner into the project, which further delayed the project. The new venture, CK MRP Washington Gateway, LLC, purchased Lots 23 and 811 in November of 2010, for \$25,416,240, less than half of what the lots were purchased for in 2007. To further complicate matters, in the Fall of 2010, in response to the fragile hotel market in the NoMA submarket the hotel franchise that the PUD was originally designed to accommodate was denied.
8. In light of the foregoing, the Applicant was forced to consider the option of converting the hotel portion of the project to a residential use. The time it will take to make the necessary design revisions, obtain the approval of the PUD Modification, and prepare the permit drawings will extend beyond the term of the PUD approval. Due to the interconnected nature and scale of the PUD, a delay in the residential/hotel portion of the project necessitates a delay in the overall project, because the residential/hotel building must be constructed prior to or concurrently with the office building.

9. The Applicant's request for a time extension included an affidavit attesting to the foregoing. The affidavit is attached as Exhibit C of the Applicant's letter. (Exhibit 1.)
10. On April 14, 2011, the District of Columbia Office of Planning ("OP") submitted a report stating that the time extension application met all applicable standards for approval. (Exhibit 4.)
11. On April 25, 2011, the Commission took final action to approve Z.C. Case No. 06-14B for the modification of the PUD.
12. The only other party to this application for an extension of the PUD approval was Advisory Neighborhood Commission ("ANC") 5C. The Applicant served a copy of its request on ANC 5C, which submitted a letter dated March 15, 2011, in support of the request for a two-year PUD extension. (Exhibit 5.) ANC 5C's letter did not indicate whether the matter was considered at a meeting that was properly noticed by the ANC, the number of members of the ANC that constitute a quorum, the vote on the motion to adopt the report, or whether the meeting was open to the public.

CONCLUSIONS OF LAW

1. Pursuant to § 2408.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval 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 shown if an applicant has demonstrated with substantial evidence one or more of the following criteria: (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 § 208.10(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 facts that would undermine the Commission's justification for approving the original PUD.
4. 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.

5. 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. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.
6. 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.
7. 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.
8. The Commission is required by § 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 expressed in the affected ANC's written recommendation. However, ANC 5C's letter did not meet several threshold criteria established by the ANC Act. The letter did not indicate whether the matter was considered at a meeting that was properly noticed by the ANC, required by D.C. Official Code § 1-309.11(c), or whether the meeting was open to the public, required by D.C. Official Code § 1-309.11(g). The letter was therefore not qualified to receive great weight. D.C. Official Code § 1-309.10(d)(1).
9. 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. In its report, OP concluded that the Applicant had satisfied all the relevant criteria for approval. The Commission has carefully considered its analysis and has given the recommendation great weight.

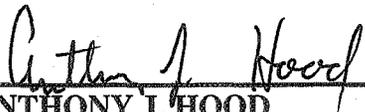
DECISION

1. 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 the PUD approved in Z.C. Order No. 06-14, and modified in Z.C. Order No. 06-14B (collectively, the "PUD").
2. The PUD shall be valid until June 29, 2013, within which time an application must be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than June 29, 2014. Failure to take these actions shall result in the expiration of the PUD approval as of the applicable date.

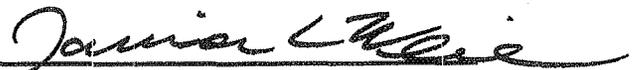
3. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 *et seq.* (Act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, 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 April 25, 2011, upon the motion of Chairman Hood, as seconded by Commissioner May, this Order was **ADOPTED** by the Zoning Commission at its public meeting, by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, Michael G. Turnbull, and Greg M. Selfridge to adopt).

In accordance with the provisions of 11 DCMR §3028.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on July 22, 2011.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAIMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 06-14C

JUL 20 2011

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 06-14C were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | | | |
|----|---|----|--|
| 1. | <i>D.C. Register</i> | 5. | Gottlieb Simon
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1350 Pennsylvania Avenue, N.W.
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| 2. | Leila Batties, Esq.
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2099 Pennsylvania Avenue, N.W., #100
Washington, D.C. 20006 | 6. | Councilmember Harry Thomas, Jr. |
| 3. | ANC 5C
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| 4. | Commissioner Tim Clark
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1100 4 th Street, S.W.
Washington, DC 20024 |
| | | 9. | Office of the Attorney General (Alan Bergstein) |

ATTESTED BY:

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