

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-21B
Z.C. CASE NO. 06-21B

Douglas Development Corporation
2-Year Time Extension for PUD at 6th and L Streets, N.W.
(Square 449, Lots 800, 859, 50 and 51)
June 22, 2009

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on June 22, 2009. At the meeting, the Commission approved a request from Douglas Development Corporation (the "Applicant") for a time extension for an approved planned unit development ("PUD") for property consisting of Lots 50, 51, 800, and, 859 in Square 449 (the "Subject Property"), 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. 06-21, the Commission approved on the Subject Property a PUD and related zoning map amendment, changing the zoning on the Subject Property from DD/R-5-B to DD/C-2-C. The PUD is a residential development consisting of approximately 20 dwelling units, and includes the rehabilitation of the historic James Essex House. The floor area for the dwelling units total approximately 22,047 square feet. The project amenities include a landscaped courtyard and below grade parking.
2. Zoning Commission Order No. 06-21 became effective upon its publication in the *D.C. Register* ("DCR") on September 28, 2007. Pursuant to Condition No. 10 of that order and 11 DCMR § 2408.8, the Commission's approval is valid for a period of two years. If no application for a building permit or motion for time extension is filed within that timeframe, the PUD expires.
3. At its public meeting on September 28, 2008, the Commission adopted Order No. 06-21A, which approved a reduction in the parking for the project from 10 to nine spaces, but did not extend the PUD approval. With this exception of the reduction in parking spaces, the PUD has not changed in any form from the original approval.
4. By letter dated and received by the Commission on May 12, 2009, 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 September 28, 2011, and construction must commence no later than September 28, 2012.

5. The letter indicates that the project has experienced delay beyond the Applicant's control. In this case, the Applicant has been unable to obtain sufficient financing for the construction of the approved project. The financial crisis has frozen the credit markets, making construction loans for real estate development projects impossible to obtain.
6. The only other party to this application was Advisory Neighborhood Commission ("ANC") 2C. The Applicant served a copy of its request on ANC 2C, which did not submit a response regarding the Applicant's request.

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 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.
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.

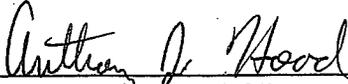
6. The Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.
7. The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

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 Zoning Commission Case No. 06-21B.
2. The final PUD approved by the Commission shall be valid until September 28, 2011, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction shall commence no later than September 28, 2012.
3. 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.

On June 22, 2009, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, this Order was **ADOPTED** by the Zoning Commission at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad S. 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 *D.C. Register*; that is, on July 3, 2009.



ANTHONY J. HOOD
CHAIRPERSON
ZONING COMMISSION



RICHARD S. NERO, JR.
ACTING DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 06-21B

As Secretary to the Commission, I hereby certify that on JUL 1 2009 copies of this Z.C. Order No. 06-21B 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. Leila M Jackson Batties, Esq. Holland & Knight 2099 Pennsylvania Avenue, N.W., #100 Washington, D.C. 20006 | 6. Councilmember Evans |
| 3. Doris Brooks, Chair ANC 2C P.O. Box 26182 Washington, DC 20001 | 7. DDOT (Karina Ricks) |
| 4. Commissioner Doris Brooks ANC/SMD 2C03 612 Emmanuel court, N.W. #204 Washington, DC 20001 | 8. General Counsel - DCRA 941 North Capitol Street, N.E. Suite 9400 Washington, D.C. 20002 |
| | 9. Office of the Attorney General (Alan Bergstein) |

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