

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-40A

Z.C. Case No. 06-40A

Gateway Market Center, Inc.

(Two-Year Time Extension for PUD

@ Square 3587, Lots 5, 800, 802, and 809 and Parcels 129/9 and 129/32)

May 23, 2011

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the “Commission”) was held on May 23, 2011. At the meeting, the Commission approved a request from Gateway Market Center, Inc. (the “Applicant”) for a time extension for the consolidated planned unit development (“PUD”) for the property consisting of Lots 5, 800, 802, and 809 in Square 3587 and Parcels 129/9 and 129/32, pursuant to Chapters 1 and 24 of the Zoning Regulations (11 DCMR).

FINDINGS OF FACT

1. By Z.C. Order No. 06-40 (the “PUD Order”) dated April 24, 2009 and effective April 28, 2009, the Commission approved a PUD for Lots 5, 800, 802, and 809 in Square 3587 and Parcels 129/9 and 129/32 (the “Property”). The PUD Order approved a mixed-use, residential, retail, and office development containing a maximum of 294,092 square feet of gross floor area and constructed to a height of 119 feet. The PUD Order also approved a related map amendment to rezone the PUD site from C-M-1 to C-3-C. Pursuant to Condition No. 17 of the PUD Order, the PUD approval would expire if a building permit application as specified in 11 DCMR § 2409.1 was not filed on or before April 28, 2011.
2. By letter dated and received by the Commission on April 7, 2011, the Applicant requested to extend the validity period of the PUD approval by two years. The request, if approved, would require that an application for building permit be filed no later than April 28, 2013 and that construction must be started no later than April 28, 2014.
3. The Applicant submitted evidence that the project has experienced delays beyond the reasonable control of the Applicant as a result of the nationwide financial crisis and lack of liquidity in the financial markets. The evidence included an affidavit explaining that although the Applicant had financing commitments in place prior to approval of the PUD, those commitments were withdrawn in late 2008 and early 2009, prior to issuance of the PUD Order. The affidavit also detailed the Applicant’s efforts since the PUD Order was issued to find sources of financing for the project.

4. The Applicant served a copy of the request on Advisory Neighborhood Commission (“ANC”) 5B and ANC 6C, the only two parties in the case. ANC 6C submitted a letter in support of the requested two-year time extension on May 16, 2011. (Exhibit 6.) ANC 5B did not submit a written response.
5. The Office of Planning (“OP”) submitted a report dated May 13, 2011, indicating that the Applicant meets the standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations. OP thus recommended that the Commission approve the requested two-year PUD extension. (Exhibit 5.)
6. The Commission finds that there has not been a substantial change in the material facts upon which the initial PUD approval was based, and finds that the essential elements of the PUD have not changed. The Applicant has provided substantial evidence that there is good cause for the extension, pursuant to 11 DCMR § 2408.11(a), and the Commission finds that the request for the two-year time extension should be granted.

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 to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact 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) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided for in § 2408.11. (11 DCMR § 2408.10.) Subsection 2408.11 provides the following criteria for good cause shown: (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.

The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by the Applicant serving ANC 5B and ANC 6C with a copy of the application and allowing 30 days for a response by the ANCs.

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

The Commission concludes that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 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.

The Commission is required under § 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) (2001)) to give great weight to the affected ANC's recommendations. ANC 6C submitted a letter in support of the requested extension. (Exhibit 6.) The Commission has given ANC 6C's recommendation great weight in approving this application.

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. OP submitted a report indicating that the Applicant meets the standards of § 2408.10 and 2408.11(a) of the Zoning Regulations, and therefore recommended that the Commission approve the requested extension. The Commission has given OP's recommendation great weight in approving this application.

Section 2408.12 of the Zoning Regulations provides that a public hearing must be held by the Commission 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 Commission concludes that a hearing is not necessary for this request since there are no material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.

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

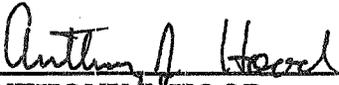
In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a two-year extension of the time in which to file a building permit for the construction of a new mixed-use development in Square 3587, which was initially approved in Z.C. Order No. 06-40. The approval of the two-year extension shall be valid until April 28, 2013, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than April 28, 2014.

In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.* (the "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 May 23, 2010, upon the motion made by Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, Greg M. Selfridge, 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 22, 2011.



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.: 06-40A

As Secretary to the Commission, I hereby certify that on JUL 20 2011 copies of this Z.C. Order No. 06-40A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Kinley Bray, Esq.
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9. Councilmember Harry Thomas, Jr.
10. DDOT (Martin Parker)
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12. Office of the Attorney General (Alan Bergstein)

ATTESTED BY:

A handwritten signature in cursive script, appearing to read "S. S. Schellin", is written over a horizontal line.

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