

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-07A

Z.C. Case No. 07-07A

**(Broadcast Residential Partners, LLC and the District of Columbia –
Two-Year PUD Time Extension @ Square 441, Lots 21, 66, 97, 814, 815, 855, and 857)
March 8, 2010**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the “Commission”) was held on March 8, 2010. At the meeting, the Commission approved the request of Broadcast Residential Partners, LLC on behalf of the property owner, the District of Columbia, (collectively “Applicants”) for a two-year time extension of the consolidated review and approval of a planned unit development (“PUD”) and related map amendment for Square 441, Lots 21, 66, 97, 814, 815, 855, and 857 (“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. 07-07, effective January 25, 2008, the Commission approved a PUD and related map amendment for the Property. The approved PUD provided for the development of a mixed-use, transit-oriented development located above the Shaw-Howard University Metrorail Station (“Project”). The Project included a mixture of office, retail, and residential uses and included “Radio One” as its signature office tenant. It also included a significant amount of affordable housing: it reserved 25% of the total number of residential units as affordable to households with an income between 31% and 120% of the Area Median Income. Zoning Commission Order No. 07-07 also approved a related map amendment from the ARTS/C-2-B Zone District to the C-2-C Zone District.
2. In order to construct the Project, the Applicants were required to (a) enter into an agreement with the Washington Metropolitan Area Transit Authority (“WMATA”) regarding the air rights above the Metrorail station; (b) finalize lease negotiations with Radio One; and (c) secure financing. Each of the three prerequisites posed challenges to development of the Project.
3. The Applicants’ negotiations with WMATA lasted approximately two years before an agreement was reached regarding the air rights above the Metrorail station. Similarly, the Applicants have been diligently negotiating a lease with Radio One to secure it as a lead tenant in the office space. Finally, the Applicant has acted in good faith over the last two

years to secure financing for the Project. Its efforts have included pursuing alternative financing mechanisms such as New Markets Tax Credits.

4. Despite the Applicants' efforts, it has not secured building permits for the project and Zoning Commission Order No. 07-07 was set to expire on January 25, 2010. Accordingly, the Applicants filed a request on January 22, 2010 to extend the PUD approval and related map amendment for a period of two years.
5. Advisory Neighborhood Commission ("ANC") 1B, the ANC within which the Property is located, was automatically a party in the instant case, as well as the original PUD case. Accordingly, the Applicant served the ANC a copy of the extension request and provided at least 30 days for them to respond. At its regularly scheduled meeting on February 4, 2010, the ANC voted unanimously in support of the time extension of the PUD. It submitted a letter dated February 10, 2010, indicating its support into the record.
6. The Office of Planning ("OP") submitted a report dated February 26, 2010, into the record indicating its support of the time extension. OP stated that the Applicants demonstrated good cause for the requested extension.

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 Applicants 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 Applicants presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a). Specifically, the deterioration of the real estate market in the District of Columbia made it difficult for the Applicants to secure financing for the Project. Further, the Applicants worked diligently for two years to negotiate an agreement with WMATA regarding use of the air rights above the Metro Station as well as with Radio One to secure the organization as its lead commercial tenant. Without financing or these agreements in place, the Applicants were not able to secure building permits for the Project prior to the expiration of the PUD and related map amendment.

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

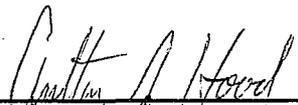
In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of Case No. 07-07A for a two-year time extension of the PUD approval and related map amendment in Zoning Commission Order No. 07-07.

The final PUD and related map amendment approved by the Commission shall be valid until January 25, 2012, within which time an application shall be filed for a building permit, as specified in § 2409.1. Construction shall start no later than January 25, 2013.

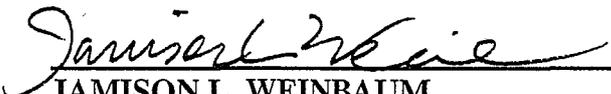
For the reasons stated above, the Commission concludes that the Applicant has met its burden; it is hereby **ORDERED** that the Application be **GRANTED**.

On March 8, 2010, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** the 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 23, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING