

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-13C**

Z.C. Case No. 07-13C

**Trustees for the Corcoran Gallery of Art
(Two-Year PUD Time Extension @ Square 643S, Lot 801)
May 14, 2012**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public meeting on May 14, 2012. At the meeting, the Commission approved a request from the Trustees for the Corcoran Gallery of Art (“Applicant”) for a second time extension for an approved planned unit development (“PUD”) and related map amendment for property consisting of Lot 801 in Square 643S (“Subject Property”) pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations.

FINDINGS OF FACT

1. By Z.C. Order No. 07-13, the Commission approved a PUD and a related Zoning Map amendment from the R-4 Zone District to the C-3-C Zone District for the Subject Property. The Subject Property consists of approximately 115,724 square feet of land and is presently improved with the former Randall Junior High School, a historic landmark listed in the D.C. Inventory of Historic Places. The approved PUD includes plans to redevelop the site to establish a new campus for the Corcoran College of Art and Design (“Corcoran”) and construct a new multi-family residential building consisting of approximately 440-490 units. The PUD would have an overall density of 4.32 floor area ratio (“FAR”), with approximately 1000,000¹ square feet of building space (76,043 square feet of gross floor area) devoted to the Corcoran College of Art and Design. The order became effective on March 21, 2008, and pursuant to 11 DCMR § 2408.8, was to expire on March 21, 2010, unless an application was filed for a building permit.
2. By Z.C. Order No. 07-13A effective September 26, 2008, the Commission approved a modification to the PUD to allow construction of the project in phases. The modification order did not alter the expiration of the original PUD order.

¹ The Corcoran School of Art will occupy a total of approximately 100,000 square feet of space, a portion of which is below grade and does not count toward FAR.

3. By Z.C. Order No. 07-13B effective March 17, 2010, the Commission approved an extension of the validity of the PUD and related map amendment for a period of two years, such that an application for a building permit for the PUD would need to be filed no later than March 21, 2012, and construction started no later than March 21, 2013.
4. By letter dated December 22, 2011, and received by the Commission January 5, 2012, the Applicant filed a request to extend the validity of the PUD and related map amendment for a period of two years, such that an application for a building permit must be filed for the PUD no later than March 21, 2014, and construction must start no later than March 21, 2015. The Applicant stated that the project continues to experience delays beyond the Applicant's control, specifically the delays experienced as a result of the recession, the need to select a new development partner, and the need to coordinate with District agencies based on the programmatic uses subsequently dictated by Council legislation in D.C. Law 18-294. (Exhibit ["Ex."] 1.)
5. At its meeting on February 13, 2012, the Commission voted to hold the extension request in abeyance for four months.
6. By letter dated and received by the Commission on April 19, 2012, the Applicant supplemented its request to extend the validity of the PUD and related map amendment approval for a period of two years. The Applicant stated that without the requested PUD extension in place, the ability to obtain financing for the development of the Subject Property would be seriously compromised and add significant time delays to a project that previously experienced setbacks due to the recession. (Ex. 10.)
7. The Applicant's letter indicated that the new developer for the Subject Property, TR SW LLC ("Telesis/Rubell"), was able to close on financing for acquisition and pre-development of the Subject Property in 2011 due in large part to the first PUD extension order and the Council's legislative action, demonstrating continued forward momentum for the development. The Applicant stated that Telesis/Rubell has invested significant time and expense to create a plan that incorporates the required museum and arts spaces under the legislation, and has retained Bing Thom Architects to develop a design for the Subject Property. According to an affidavit provided by Telesis/Rubell, any lapse in the validity of the order while the Applicant seeks a PUD modification would force the Applicant to start over; would undermine the development premise on which lenders have been and are relying; would devalue the property; would make financing more difficult; and would likely delay the project another eight months to a year, or longer. Therefore, according to the information provided by Telesis/Rubell, the second PUD extension is critical in order to maintain lender/investor confidence and accommodate flexibility in the schedule to obtain final approval of a PUD modification, concurrent historic preservation approval, and reach a construction start. (Ex. 10.)

8. Advisory Neighborhood Commission (“ANC”) 6D, the ANC within which the Subject Property is located, was automatically a party in the instant case, as well as the original PUD and map amendment case. There were no other parties to the original PUD and map amendment case. The Applicant served the ANC with a copy of the extension request and the ANC was provided at least 30 days to respond.
9. By letter dated February 6, 2012, ANC 6D requested the Commission to hold the record open until February 28, 2012, to allow it sufficient time to consider the second PUD extension request. (Ex. 7.) By letter dated February 16, 2012, ANC 6D reported to the Commission that at its meeting on February 13, 2012, ANC 6D voted 6-0-0 to oppose the extension request, citing the need for additional information from the Applicant. Thereafter, by letter dated March 16 and received by the Commission on March 21, 2012, ANC 6D advised the Commission that by a vote of 5-0-1 it rescinded its opposition to, and recommended approval of, the extension request for a period not to exceed two years. (Ex. 8.) The Commission finds the ANC’s advice to be persuasive.
10. By report dated February 3, 2012, the Office of Planning (“OP”) recommended approval of the extension request. OP determined, and the Commission so finds, that there were no material changes to the facts upon which the Commission relied in approving the original PUD. OP concluded, and the Commission so finds, that the Applicant met the criteria set forth in 11 DCMR § 2408.10 and 2408.11. (Ex. 5)

CONCLUSIONS OF LAW

The Commission may extend the validity of a PUD and related map amendment 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 demonstrates 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.)

Based upon the findings of fact described above, the Commission concludes that the Applicant has met its burden of proof. The Applicant has demonstrated its inability to obtain financing for the PUD while the project undergoes modification in conformance with the Council legislation.

The Applicant's development partner has demonstrated its diligent good faith efforts to move the project forward by securing financing to acquire the site and making substantial investments in the pre-development costs, including the hiring of an architectural firm to prepare a new design for the project in conformance with the Council legislation. The external factors of continuing economic instability and changing market conditions, together with the new development partner's need to restructure the program for the site through new legislation, are all conditions beyond the Applicant's control.

The Commission further concludes that there is no material factual conflict that has been generated by the parties that would require a hearing under § 2408.11.

As noted, ANC 6D indicated that it supported approval of the two-year time extension through its letter dated March 16, 2012. The Commission has acknowledged the letter and indicated that it found the ANC's advice to be persuasive. The Commission therefore satisfied the "great weight" requirement of Section 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)).

DECISION

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of Z.C. Case No. 07-13C for a two-year extension of the validity of Z.C Order Nos. 07-13 and 07-13A. The final PUD approved by the Commission shall be valid until March 21, 2014, within which time an application shall be filed for a building permit, as specified in § 2409.1. Construction shall start no later than March 21, 2015.

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

On May 14, 2012, upon a motion made by Commissioner Hood, as seconded by Commissioner Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Marcie I. Cohen, 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 August 31, 2012.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING