

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 07-13E
Z.C. CASE NO. 07-13E
Trustees of the Corcoran Gallery of Art and TR SW 2 LLC
(PUD Time Extension @ Square 643-S, Lot 801)
March 10, 2014

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on March 10, 2014. At the meeting, the Commission approved a request from the Trustees of the Corcoran Gallery of Art and TR SW 2 LLC (“Applicant”) for a time extension for an approved planned unit development (“PUD”) for property consisting of Lot 801 in Square 643-S (“Subject Property”) pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations (11 DCMR).

FINDINGS OF FACT

1. By Z.C. Order No. 07-13, the Commission approved a PUD for the Subject Property and a related application to amend the Zoning Map 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 area. The approved PUD includes plans to redevelop the former Randall Junior High School as a new campus for the Corcoran College of Art and Design and a new residential building consisting of 440-490 units. The approved project provided approximately 499,843 square feet of gross floor area, of which 76,043 square feet of gross floor area would be devoted to academic uses. The building would be constructed to a maximum height of 100 feet and would have a density of 4.32 floor area ratio (“FAR”). (“Original PUD.”)
2. By Z.C. Order No. 07-13A, dated June 9, 2008, and effective September 27, 2008, the Commission approved a minor modification to allow phased construction of the PUD.
3. By Z.C. Order No. 07-13B, dated February 22, 2010, and effective March 19, 2010, the Commission granted a two year extension to the validity of the original Order, such that a building permit application must be filed for the PUD no later than March 21, 2012, and construction must be started no later than March 21, 2013.
4. By Z.C. Order No. 07-13C, dated May 14, 2012, and effective August 31, 2012, the Commission granted a second two year extension to the approved PUD, such that a building permit application must be filed for the PUD no later than March 21, 2014, and construction must be started no later than March 21, 2015.

5. On May 31, 2013, the Applicant filed an application with the Commission for a modification to the approved PUD (Z.C. Case No. 07-13D). The Applicant sought approval to (i) fully redesign the envelope of the residential portion of the building; (ii) change the project's art component by replacing the Corcoran College of Art and Design with a new museum of contemporary art; (iii) reallocate the approved density of 4.32 FAR such that approximately 443,843 square feet of gross floor area would be devoted to residential uses and 56,010 square feet of gross floor area would be devoted to non-residential uses; (iv) increase the height of the residential portion of the building from 100 feet to 110 feet; (v) provide approximately 290-370 vehicle parking spaces located on two levels of on-site parking; and (vi) modify the loading facilities and move them underground.
6. By letter dated January 27, 2014, the Applicant filed a third request to extend the validity of the PUD approval. The letter indicates that the extension is necessary to allow the Commission time to act on and issue a written order for the PUD modification in Z.C. Case No. 07-13D. The Applicant was concerned that the written order granting the PUD modification might not be issued prior to the expiration of the current PUD on March 21, 2014, which would then deprive the Commission of its jurisdiction to grant the modification. The letter therefore requested that the Commission approve an extension of the PUD, so that the validity of Z.C. Order No. 07-13 is extended until such time as the Commission issues an order approving the PUD modification application in Z.C. Case No. 07-13D.
7. The extension request was referred to the Office of Planning ("OP") on January 31, 2013. OP did not file a report.
8. On March 10, 2014, the Commission took final action to approve the extension request. In order to give the Applicant the greatest flexibility possible, the Commission granted a two-year extension of the Original PUD, rather than the short term extension requested by the Applicant. At the same time, the Commission granted the application to modify the PUD. The order granting the modification application (Z.C. Order No. 07-13D) is being published simultaneously with this Order. Z.C. Order No. 07-13D establishes deadlines to file applications for building permits and to commence construction of the modified phased development approved in that order. The failure of the Applicant to meet the deadlines extended in this Order for the Original PUD will have no effect its ability to develop the PUD as modified in Z.C. Order No.07-13D.

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. Subsection 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 that although certain elements of the PUD are being changed, the fundamental program remains the same. The project will continue to provide a substantial amount of housing, affordable housing, and museum and related retail uses, as contemplated in the approved PUD. The Commission therefore concludes that there are no material changes to the application that would undermine the Commission's justification for approving the original PUD.
4. 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(b), the Applicant's inability to secure all required governmental agency approvals for the 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. 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.
5. 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)) to give great weight to the affected ANC's recommendations. The ANC was provided 30-day notice in accordance with § 2408.10(b), but it did not file any report or recommendation.
6. 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 did not file a report on the extension request.
7. Subsection 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 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.

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 request for a time extension of the consolidated PUD and a related Zoning Map amendment from the R-4 to C-3-C Zone District for Lot 801 in Square 643-S approved in Z.C. Case No. 07-13, the validity of which was extended by Z.C. Order Nos. 07-13B and 07-13C (“Original Project”). Although the request sought an extension only until the issuance of Z.C. Order 07-13D, the Commission is granting a two year extension of the Original PUD.

The Original Project approved by the Commission therefore shall be valid for a period of two years, or until March 21, 2016, within which time the Applicant must file a building permit application. Construction must be started within three years, or by March 21, 2017. As to the modified PUD approved by Z.C. Order No. 07-13D, the time periods for filing building permit applications and commencing construction of the two phases described in Condition A.6 of that Order shall be as stated in Condition B.2 therein. The failure of the Applicant to meet the deadlines extended in this Order for the Original PUD will have no effect on its ability to develop the PUD as modified in Z.C. Order No. 07-13D and *vice versa*.

The Applicant is required to comply fully with the provisions of the D.C. Human Rights Act of 1977, D.C. Law 2038, as amended, D.C. Official Code § 2-1404.01 *et seq.* (“Act”). This order is conditioned upon full compliance with those provisions. In accordance with 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 that 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 March 10, 2014, upon the motion of Vice Chairman Cohen, as seconded by Chairman Hood, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

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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 May 9, 2014



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING