

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 07-18A  
Z.C. Case No. 07-18A  
(Jemal's Up Against the Wall, LLC)  
Two-Year Time Extension for PUD  
@ Square 347, Lots 18, 19, 818-821, 831, and 832  
June 28, 2010**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on June 28, 2010. At the meeting, the Commission approved a request from Jemal's Up Against the Wall, LLC (the "Applicant") for a time extension for an approved consolidated planned unit development ("PUD") for property consisting of Lots 18, 19, 818-821, 831 and 832 in Square 347, pursuant to chapters 1 and 24 of the District of Columbia Zoning Regulations (11 DCMR).

**FINDINGS OF FACT**

1. By Z.C. Order No. 07-18 dated April 14, 2008, and effective on May 16, 2008, the Commission approved a PUD for Lots 18, 19, 818-821, and a portion of an alley to be closed (now Lots 831 and 832) in Square 347 (the "Property"). The order approved the redevelopment of the Property as a new commercial office and retail building containing approximately 97,872 square feet of gross floor area and constructed to a height of 130 feet. Pursuant to Condition No. 12 of the Order, the PUD approval would expire unless an application for a building permit as specified in 11 DCMR § 2409.1 was filed by May 16, 2010.
2. By letter dated and received by the Commission on May 11, 2010, the Applicant requested to extend the validity of the PUD approval for a period of two years. The request, if approved, would require that an application for a building permit must be filed no later than May 16, 2012, and construction must be started no later than May 16, 2013.
3. The Applicant submitted evidence that the project has experienced delay beyond the Applicant's control, as a result of the national economic crisis. The evidence included an affidavit describing the Applicant's inability to obtain project financing from the various lending institutions with which it has worked in the past and the Applicant's efforts for seeking alternatives to finance the project.
4. The Applicant served a copy of the request on Advisory Neighborhood Commission ("ANC") 2C, the only other party to the case. The ANC did not submit a response.

5. The Office of Planning ("OP") submitted a report dated June 4, 2010 (Exhibit 6), 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.
6. The Commission finds that that there has not been a substantial change in the material facts since the original approval of the PUD and finds that the essential elements of the PUD have not changed. Because the Applicant demonstrated good cause with substantial evidence pursuant to § 2408.11(a) of the Zoning Regulations, 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 in § 2408.11. (11 DCMR § 2408.10.) Section 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 serving ANC 2C with a copy of the application and allowing it 30 days to respond.

The Commission concludes 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 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.

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. 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.

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.

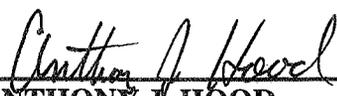
**DECISION**

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 commercial office and retail building in Square 347, which was initially approved in Z.C. Order No. 07-18. The approval of the two-year extension shall be valid until May 16, 2012, 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 May 16, 2013.

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, 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 June 28, 2010, upon the motion made by Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission approved this application by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, Michael G. Turnbull, and Peter G. May to approve; third Mayoral appointee vacant, not voting).

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 November 26, 2010.

  
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ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION

  
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JAMISON L. WEINBAUM  
DIRECTOR  
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



Z.C. CASE NO.: 07-18A

NOV 24 2010

As Secretary to the Commission, I hereby certify that on NOV 24 2010 copies of this Z.C. Order No. 07-18A mailed first class, postage prepaid or sent by inter-office government mail to the following:

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| 1. D.C. Register   | 6. Gottlieb Simon<br>ANC<br>1350 Pennsylvania Avenue, N.W.<br>Washington, D.C. 20004                               |
| 2. Mary Carolyn Brown, Esq.<br>Holland & Knight, LLP<br>2099 Pennsylvania Ave., N.W.<br>Washington, D.C. 20006 | 7. DDOT (Karina Ricks)   |
| 3. ANC 2C<br>P.O. Box 26182<br>Washington, DC 20001  | 8. Melinda Bolling, Acting General<br>Counsel<br>DCRA<br>1100 4 <sup>th</sup> Street, S.W.<br>Washington, DC 20024 |
| 4. Commissioner Doris Brooks<br>ANC/SMD 2C03<br>612 Emmanuel Court, N.W. #204<br>Washington, DC 20001          | 9. Office of the Attorney General<br>(Alan Bergstein)  |
| 5. Councilmember Jack Evans  |  |

ATTESTED BY:

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