

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-18B

Z.C. Case No. 07-18B
Jemal's Up Against the Wall, LLC
(Two-Year Time Extension for PUD)
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 Jemal's Up Against the Wall, LLC ("Applicant") for a second 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 ("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.
2. By Z.C. Order No. 07-18A, the Commission extended the validity of the PUD for a period of two years, such that an application for a building permit would need to be filed no later than May 16, 2012, and construction started no later than May 16, 2013.
3. By letter dated and received by the Commission on April 10, 2012, the Applicant requested an extension of the validity of the PUD approval for an additional two-year period.
4. The Applicant submitted evidence that the project has continued to experience delays beyond the Applicant's control. Since approval of the previous extension request, the Applicant has continued to aggressively pursue financing options for the project. However, the District's commercial real estate market has not fully recovered from the economic recession in 2008-09 and the market continues to fluctuate significantly. In addition, the uncertainty created by the federal government budget crisis in 2011 stalled leasing activity and restricted economic growth in the District's commercial office market. Nevertheless, commercial office markets are expected to steadily improve by the end of 2012. Until the net absorption rate improves and the office economy recovers,

however, financing for this project will not be available before the expiration of the PUD's validity in May 2012. These circumstances are beyond the reasonable control of the Applicant.

5. The Applicant served a copy of the PUD extension request on Advisory Neighborhood Commission ("ANC") 2C, the only other party to the case. The ANC did not submit a response.
6. By report dated and received by the Commission on May 4, 2012, the Office of Planning ("OP") recommended approval of the extension request.
7. 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 has 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 further 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 continuing stress in economic and real estate 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, 2014, 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, 2015.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. 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, disability, source of income, genetic information, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On May 14, 2012, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Schlater, 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).

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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 October 5, 2012.



ANTHONY J. HOOD
CHAIRPERSON
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING