

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 08-27A1**

**Z.C. Case No. 08-27A**

**American Institute of Architects and AIA Legacy, Inc.**

**(Two-Year Time Extension for Consolidated PUD & Related Map Amendment**

**@ Square 170 – Lots 38 and 39)**

**September 12, 2011**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on September 12, 2011. At that meeting, the Commission approved the request of the American Institute of Architects and AIA Legacy, Inc. (collectively, the “Applicant”) for a two-year time extension in which to file a building permit application for the project approved in the consolidated planned unit development (“PUD”) and related Zoning Map Amendment application approved by Z.C. Order No. 08-27, as corrected by Z.C. Order No. 08-27A. The time extension 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. The PUD project approved in Z.C. Order Nos. 08-27 and 08-27A, which became final and effective on July 17, 2009, authorized the renovation and rehabilitation of the AIA headquarters office. The approved project included renovations of the plaza area between the AIA headquarters building and the Octagon House, as well as retail uses and multi-purpose spaces that are directly accessible from the plaza. Z.C. Order Nos. 08-27 and 08-27A also authorized the PUD related rezoning of the property from the SP-2 Zone District to the C-3-C Zone District. The Applicant recorded the required PUD Covenant in the D.C. Land Records on October 6, 2009, and filed a copy of the recorded PUD Covenant with the Office of Zoning on October 7, 2009.
2. During 2009 and even before the Commission took Proposed Action to approve the PUD and Zoning Map Amendment application, the Applicant undertook various steps to obtain appropriate financing for the headquarters renovation project. In April of 2009, the Applicant hired a financial advisor and in June of 2009 the Applicant selected bond counsel and an underwriter for the bonds that would finance this project. Representatives of the Applicant met with District of Columbia officials (including the Deputy Mayor for Planning and Economic Development and her staff) in September 2009, and also met during that same month with Councilmember Jack Evans (the Chairman of the Council’s Finance Committee). Similarly, representatives of the Applicant engaged in meetings with representatives of numerous financial institutions (including Prudential Mortgage,

PNC, Wells Fargo, M&T Bank, ETrade Bank, SunTrust Bank, and Bank of America) during the period of June 2009 through September 2009 regarding the potential financing of the renovation and rehabilitation of the AIA headquarters office building. With the worsening of the financial markets in the fall of 2009 and beyond, the Applicant found itself with few financing options for this project. Moreover, the Applicant was faced with an even greater threat to its members, as the real estate industries (including architecture) were hit especially hard by this recession. (Exhibit 1.)

3. Following the market crash of 2008 (where AIA lost almost 30% of its reserves asset balance), the preservation of AIA operations was crucial and keeping a balanced budget a priority. By December of 2009, AIA was forced to institute layoffs of 33 positions, or 15.9% of its full-time staff count. During 2010, AIA saw its membership revenues decline by eight percent from 2008 and an additional three percent from 2009 levels and its overall revenues decline by 12% for the same period. In 2010, the AIA requested a third party appraisal on the value of the headquarters building and the Octagon House properties to support the financing of the headquarter's renovation and rehabilitation project. According to that appraisal, the value of the AIA Building was \$19.5 million, roughly a 50% decline from the previous appraised value. This lower valuation made it even more difficult to secure financing at that time.
4. Given the economy, AIA's financial position, the sources of its revenue stream, and the very low equity in AIA's real estate holdings – the AIA headquarters renovation and rehabilitation project was no longer an attractive project for long term financing to all of the financial institutions it solicited and could not be funded in 2010. The Applicant further noted that in 2011 the financial markets continue to be tight and suitable financing difficult to achieve. The availability of long-term, fixed-rate commercial mortgage debt is not available for the project due to the uncertain nature of the AIA's revenue streams, the continued financial crises, and uncertainties surrounding the economy and its impact on AIA's members. (Exhibit 1.)
5. Advisory Neighborhood Commission (“ANC”) 2A submitted a letter (dated July 23, 2011) indicating that it unanimously adopted a resolution in opposition to the time extension request. ANC 2A concluded that the material facts upon which the Commission based its original decision have substantially changed, because of the addition of § 518 to the Zoning Regulations on February 5, 2010. The new section allows for special exception approval of certain retail uses in the SP-2 Zone District for properties located south of M Street, N.W. and N.E. Thus, the bookstore permitted through the map amendment could now be approved through a special exception application. ANC 2A's July 23, 2011 letter also reiterated its previous objection to the use of the PUD process for this application and stated that “the minor relief sought by the applicant can easily be facilitated via the Board of Zoning Adjustment process.” (Exhibit 4.)

6. The Applicant provided a supplemental submission dated July 26, 2011. (Exhibit 5.) The Applicant argued that the only relevant raised in the ANC's submission is whether new § 518 is a substantial change of the material facts upon which the Commission based its original approval of the PUD which undermines the Commission's justification for approving the original PUD. The Applicant claimed that the original PUD included areas of relief that were unrelated to the new special exception<sup>1</sup>. Therefore, even with the ability to now seek special exception approval for the proposed location, visibility and use of the AIA bookstore; the Applicant would be required to seek multiple variances (including perhaps a use variance<sup>2</sup>) and special exception relief in order to make the modifications to the AIA headquarters building if this time extension request was denied.
7. The submission also referenced a letter from the West End Citizen's Association ("WECA"), a party in the original application, dated July 19, 2011 in opposition to the time extension request. The Applicant believed that WECA submitted a letter into the record of this case, but no such letter was actually filed. The Applicant indicated that WECA's basis for its opposition was essentially the same as the ANC's.
8. In its September 1, 2011 report to the Commission, the Office of Planning ("OP") recommended approval of the PUD time extension request. OP concluded that the Applicant satisfied the relevant standards of §§ 2408.10 and 2408.11. OP noted that:

Even with the later adoption of § 518, the Commission's reasoning that the PUD and related map amendment process was the preferable route for the multiple special exception and variance requests remains applicable. As such, there have been no substantial changes to any of the material facts upon which the Zoning Commission based its original approvals (08-27 & 08-27A), including the Zoning Regulations and the Comprehensive Plan.

(Exhibit 6.)

### **CONCLUSIONS OF LAW**

The Commission may extend the time period of an approved PUD provided the requirements of 11 DCMR § 2408.10 and 2408.11 are satisfied. Section 2408.10(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The

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<sup>1</sup> Among other things, the Commission authorized an addition to a non-conforming roof structure as well as multiple roof structures on one building, and granted relief from the roof structure setback and height requirements.

<sup>2</sup> The Zoning Map amendment allows the multi-purpose room in the building's ground floor to be leased to outside groups and organizations for meetings, receptions and events. This proposed use would most likely be deemed to be an assembly hall, auditorium, or public hall. These uses are first permitted in the C-2 Zone District and are not allowed as a special exception under §518. Therefore, a use variance would be required to allow these proposed uses in the SP-2 Zone District.

Applicant served the parties to the original PUD and Zoning Map Amendment application, ANC 2A and WECA, when it filed the time extension application on July 13, 2011.

ANC 2A submitted a letter in opposition to the time extension request. The ANC's opposition focused upon the § 2408.10(b) requirement that the Commission find that there has been no substantial change in any of the 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. The ANC, and apparently WECA, conclude that the Commission's adoption of § 518 constitutes a substantial change because the Applicant can now seek special exception relief for the bookstore permitted as a result of the map amendment approved in the PUD.

However, the Commission knew when it granted approval of this PUD that that the Applicant was seeking zoning relief that was also available before the BZA and found that fact to be immaterial, concluding instead that:

[T]he PUD and related map amendment process is the best proposed modifications through the BZA process, the Applicant would have to seek multiple variances and special exception relief. The Commission finds this process inappropriate and unnecessary. The Commission does not agree with the ANC and WECA that variance relief from the BZA would be the proper course of action for the Applicant's proposed modifications. The requested areas of relief from the Zoning Regulations can best be assessed and granted through the PUD process, which allows the Commission to consider the requested relief collectively, as opposed to piecemeal variances and special exceptions required by the BZA.

Z.C. Order No. 08-27A, Conclusions of Law No. 9, p. 12.)

Therefore, even if the special exception relief of new § 518 had been available to the Applicant at the time of the original PUD proceeding, that fact would not have been material. The Commission therefore agrees with the Applicant and OP that the adoption of new § 518 does not create a substantial change in any of the material facts upon which the Commission based its original approval and concludes that no other changes occurred since its original approval of this PUD.

Section 2408.10(c) requires that the applicant demonstrate with substantial evidence that there is a good cause for the proposed extension, as provided in § 2408.11. Pursuant to § 2408.11, an extension of validity of a PUD may be granted if the 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, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order.

The Commission finds that there is good cause shown to extend the period of time in which the Applicant is required to file a building permit application for the AIA headquarters renovation project. The Applicant engaged in numerous meetings with District economic development officials and financial institutions in order to obtain project financing. In addition, the Commission notes the distinct impacts that the current real estate recession has on an organization like the American Institute of Architects, an organization heavily dependent on the real estate industry, which relies on often uncertain membership revenue streams in order to provide the basis for project financing. The Commission concludes that the Applicant did use diligent good faith efforts to obtain the necessary financing for the project and was ultimately not able to obtain the necessary financing due to economic and market conditions that were beyond the Applicant's reasonable control. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR§ 2408.11(a).

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations (as discussed in Findings of Fact No. 8 above). OP recommended approval of the time extension request and the Commission concurs in its recommendation.

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 issues and concerns raised in the written report of the affected ANC, which in this case is ANC 2A. To satisfy the great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances.

For the reasons stated above, the Commission does not agree with the ANC's conclusion that the adoption of new § 518 changed any material fact relied upon by the Commission in granting this PUD. The ANC's reiteration of its arguments that the Applicant should have sought BZA relief instead of applying for a PUD are not relevant to a request for a PUD extension and, in any event, were rejected by the Commission when it granted the original application.

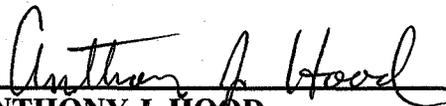
**DECISION**

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** for a two-year time extension of Z.C. Order Nos. 08-27 and 08-27A. The final PUD approved by the Zoning Commission shall be valid until July 17, 2013, within which time the Applicant will be required to file a building permit application to construct the approved PUD.

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 September 12, 2011, upon the motion of Commissioner Turnbull, as seconded by Commissioner Selfridge, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of 5-0-0 (Anthony J. Hood, Konrad W. Schlater, Greg M. Selfridge, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11 DCMR 3028.8, this Order shall become final and effective upon publication in the *D. C. Register* on December 23, 2011.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
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**RICHARD S. NERO, JR.**  
**ACTING DIRECTOR**  
**OFFICE OF ZONING**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



**Z.C. CASE NO.: 08-27A1**

As Secretary to the Commission, I hereby certify that on **DEC 22 2011** copies of this Z.C. Order No. 08-27A1 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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|---|--|
| 1. <i>D.C. Register</i>   | 6. Councilmember Jack Evans  |
| 2. Paul Tummonds, Esq.<br>Goulston & Storrs<br>1999 K Street, Suite 500<br>Washington, D.C. 20006           | 7. DDOT (Martin Parker)  |
| 3. ANC 2A<br>West End Branch Library<br>1101 24 <sup>th</sup> Street, N.W.<br>Washington, DC 20037          | 8. Melinda Bolling, Acting General Counsel<br>DCRA<br>1100 4 <sup>th</sup> Street, S.W.<br>Washington, DC 20024            |
| 4. Commissioner Eric Malinen<br>ANC/SMD 2A05<br>2440 Virginia Avenue, N.W., #D-1207<br>Washington, DC 20037 | 9. Office of the Attorney General (Alan Bergstein)   |
| 5. Gottlieb Simon<br>ANC<br>1350 Pennsylvania Avenue, N.W.<br>Washington, D.C. 20004                        | 10. West End Citizens Association<br>c/o Barbara Kahlow<br>800 25 <sup>th</sup> Street, N.W. # 704<br>Washington, DC 20037 |

ATTESTED BY:

A handwritten signature in black ink, appearing to read "S. S. Schellin", is written over a horizontal line.

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