

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-27A2

Z.C. Case No. 08-27A

American Institute of Architects and AIA Legacy, Inc.

(Two-Year PUD and Zoning Map Amendment Time Extension–Square 170 @ Lots 38 & 39)

January 30, 2012

ORDER DENYING WECA’S MOTION FOR RECONSIDERATION

By Z.C. Order Nos. 08-27 and 08-27A¹ (“Original PUD Orders”) the Zoning Commission for the District of Columbia (“Commission”) granted the application of the American Institute of Architects (“AIA”) and AIA Legacy, Inc. (collectively “Applicant”) for a planned unit development (“PUD”) and related map amendment authorizing 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, and authorized retail uses and multi-purpose spaces that are directly accessible from the plaza (“PUD Project”). The Original PUD Orders were effective on July 17, 2009 and required that the Applicant apply for a building permit within two years of that date.

On July 13, 2011, the Applicant requested a two-year extension of the validity of the Original PUD Orders. The Commission approved that request through Z.C. Order No. 08-27A1 (“Extension Order”). The Extension Order was published in the *D.C. Register* on December 23, 2011.

The Extension Order contained an analysis of an objection to the requested extension raised by Advisory Neighborhood Commission (“ANC”) 2A. ANC 2A opposed the extension request on the grounds that the adoption of § 518 of the Zoning Regulations substantially changed the material facts upon which the Commission based its original approval of the PUD. The Commission disagreed, concluding that the change was immaterial to the Commission’s decision.

The Commission made a factual finding in the Extension Order pertaining to the Applicant’s submission in response to ANC 2A’s objection. The finding referenced an objection letter that the Applicant believed was filed by the West End Citizens Association (“WECA”). The finding stated:

¹ Z.C. Order No. 08-27A included only a technical correction to Z.C. Order No. 08-27.

7. The submission also referenced a letter from the [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.

On December 28, 2011, WECA filed a timely written motion for reconsideration indicating that it did in fact file the July 19th letter and that the letter expressed other grounds for denial of the request than were stated by the ANC. The motion contained the following conclusion:

The WECA requests the following relief: (a) reconsideration of the September 2011 decision and (b) issuance of a revised Order to properly reflect the WECA's arguments and the Commission's consideration and then responses to them.

At a public meeting held on January 30, 2012, the Commission considered WECA's motion and the Applicant's opposition and concluded that July 19th letter contained no argument that would cause it to reconsider its decision.

Merits of the Motion for Reconsideration

WECA's opposition letter makes two arguments. First, WECA argues that since the Commission issued the Original PUD Orders, the Zoning Regulations were amended to add a new § 518 that permits retail in the SP Zone District as a special exception, and that as a result, the zoning relief needed to construct the Project had changed, and that therefore "AIA's requested Zoning Map amendment change is no longer justified."

The Commission carefully considered this issue when it decided the PUD extension. It was raised by ANC 2A in its own opposition to the time extension request. ANC 2A argued that it amounted to a substantial change in the material facts the Commission relied on in approving the PUD. The Commission explicitly rejected this argument in the Extension Order. As the Commission stated in the Extension Order:

[E]ven if the special exception relief of the 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. (Z.C. Order No. 08-27A1, p. 4.)

Since the argument made by WECA in its July 19th submission was considered and rejected by the Commission when granting the time extension request, those same arguments cannot form a

basis for the Commission to reconsider its decision.

WECA's second argument is that WECA believes the Applicant will not be able to proceed with the project within the extra time granted by Extension Order given the financial difficulties AIA details in its extension request. Subsection 2408.10, which sets forth the criteria for granting a time extension, does not include a requirement that the Applicant prove that the additional time requested will suffice. Substantively, the subsection only requires an applicant to prove that there is 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 and that there is good cause for such extension, as provided in § 2408.11. Because the Applicant met this burden, the Commission properly exercised its discretion to grant the extension requested.

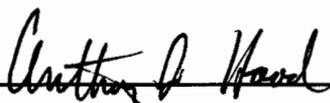
Therefore, even though this argument was not considered by the Commission when it granted the extension request, the Commission concludes it is without merit, and, therefore, furnishes no basis for it to reconsider its decision.

Conclusion

For the reasons discussed above, it is hereby **ORDERED** that the WECA's motion for reconsideration is **DENIED**, and no revised Order, as this Order contains an adequate discussion of WECA's arguments and the Commission's consideration and responses to them.

On January 30, 2012, upon the motion of Vice Chairman Schlater, as seconded by Commissioner May, the Zoning Commission voted to **ADOPT** this Order at its public meeting by a vote of **3-0-2** (Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt; Marcie I. Cohen, not having participated, not voting; Anthony J. Hood, not present, 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* on June 15, 2012.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING