

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-33E

Z.C. Case No. 08-33E

MIRV Holdings, LLC

(Time Extension – First-Stage Planned Unit Development)

February 8, 2016

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on February 8, 2016. At that meeting, the Commission approved the request of MIRV Holdings, LLC¹ (“Applicant”) for a time extension of the approval of the first-stage planned unit development (“PUD”), approved by Z.C. Order Nos. 08-33 and 08-33A through 08-33D, until December 31, 2016. The property (Parcel 121/31) that is the subject of this application is located at the intersection of Irving Street, N.E. and Michigan Avenue, N.E. (“Property”). The time extension request was made pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. Z.C. Case No. 08-33 included both a consolidated PUD approval and a first-stage PUD approval. The first-stage PUD approval included two nine-story buildings. One building is expected to be used as a hotel and/or residential building. The second building is expected to contain additional conference space and/or residential amenities on the first two floors with residential and/or hotel uses on the upper floors. A below-grade parking structure including 295 parking spaces is also included in the first-stage PUD approval. The first-stage PUD approval was for a five-year period ending on December 25, 2014.
2. On December 23, 2013, the Applicant requested a one-year time extension of the first-stage PUD approval, so that the first-stage PUD approval would be extended until December 25, 2015. Pursuant to Z.C. Order No. 08-33B, the Commission determined that the Applicant had met the relevant requirements of § 2408.10 of the Zoning Regulations and extended the time period in which the Applicant was required to file a second stage PUD application until December 25, 2015.

¹ The Applicant in Z.C. Case Nos. 08-33 and 08-33A-08-33D was Conference Center Associates, LLC. On October 9, 2015, Conference Center Associates, LLC transferred its interest in the ground lease on the Property and all development plans and approvals to MIRV Holdings, LLC. The principals of Conference Center Associates, LLC are also principals in MIRV Holdings, LLC.

3. On December 22, 2015, the Applicant filed this application requesting a one-year time extension of the approval of the first-stage PUD approval. The Applicant requested that the first-stage PUD approval be extended until December 25, 2016. Prior to December 25, 2016, the Applicant will file a second-stage PUD application with the Commission.
4. The Applicant's written materials included pertinent background information regarding the ownership of the Property and previous discussions about the permitted uses on the portion of the Property that were the subject of the first-stage PUD application. The Applicant noted that jurisdiction of the Property was transferred to the District of Columbia in 1959. In the late 1980's, the District of Columbia sought a development partner to develop a conference center facility on the Property. In order to do this, the District of Columbia sought assurances from the General Services Administration ("GSA") that as long as the Property was used for such a purpose, GSA would not seek to revoke the transfer of jurisdiction or take any other action to prohibit construction of the conference center facility. (Exhibits ["Ex."] 1, 1C.)
5. On March 7, 1990, the District of Columbia and GSA entered into a Statement of Non-Disturbance which provided the District of Columbia with assurances that "as long as the aforementioned parcel is used as a conference, training and/or exhibit center, overnight accommodations facility and ancillary uses, such as a restaurant, recreational facilities and/or gift shop, and/or compatible use and such use is consented to by the District, GSA will not seek to revoke the transfer of jurisdiction of this parcel to the District, nor will it take other action to prohibit construction, development, maintenance, operation, restoration and/or repair of the facility." (Ex. 1C.) During the review of Z.C. Case No. 08-33, the National Capital Planning Commission ("NCPC") concluded that the first-stage PUD approval would have an adverse effect on an identified federal interest because the proposed inclusion of dwelling units is inconsistent with the acceptable uses stipulated in the Statement of Non-Disturbance. In its approval of Z.C. Order No. 08-33, the Commission noted that:

[I]n deciding the first-stage PUD, its role is limited to deciding whether the Applicant has met its burden of proof under Chapter 24 of the Zoning Regulations, which does not include an evaluation of whether the proposed project, if constructed, would violate an agreement between the Applicant and third parties. The Commission noted that its approval of the PUD is limited to these criteria, and that the Applicant proceeds at its own risk with respect to the Non-Disturbance Agreement. In approving the application, the Commission takes no position as to whether the inclusion of dwelling units is inconsistent with the acceptable uses stipulated in the Statement of Non-Disturbance established on March 7, 1990 between the District of Columbia and the General Services Administration. (Ex. 1B1.)

6. In its written statement, the Applicant noted that it had: (i) diligently attempted to negotiate with the District of Columbia Government and the GSA in order to amend the Statement of Non-Disturbance to allow residential uses on the Property; and (ii) met with the major institutions in the neighborhood, including Catholic University, Trinity University, The Shrine of the Immaculate Conception, Washington Hospital Center, and Children's National Medical Center in order to assess each institution's hotel and conference needs as well as determine other needs and synergistic uses that could be included in the second phase of development on the Property. The Applicant stated that having the appropriate mix of uses on the site is very important for both the Applicant and the community. Having clarity from GSA now on the ability to have residential uses on the Property is vital to determining what the ultimate mix of uses could be on the Property. Therefore, the Applicant spent considerable effort in bringing the District (through the Deputy Mayor for Planning and Economic Development) and GSA together to address the pertinent issues related to the revision of the Statement of Non-Disturbance. The Applicant noted that it was hopeful that all parties will be able to agree on a process that will allow for residential uses to occur on the Property. It is the Applicant's belief that it will take 90–180 days to finalize the necessary revisions to the Statement of Non-Disturbance to allow residential uses. (Ex. 1.)
7. In its January 15, 2016 report to the Commission, the Office of Planning ("OP") did not oppose the PUD time extension request. (Ex. 4.)
8. The Deputy Mayor for Planning and Economic Development submitted a letter in support of the time extension request. (Ex. 1D2.)
9. Neither Advisory Neighborhood Commission ("ANC") 5A, nor ANC 5E participated in this time extension request.

CONCLUSIONS OF LAW

Pursuant to 11 DCMR § 2407.10, the Commission may extend the time period of an approved first-stage PUD in accordance with the standard and process for second-stage PUD extensions set forth in §§ 2408.10 through 2408.11. 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 only party in Z.C. Case No. 08-33 was ANC 5C. Due to the redistricting of the ANCs in accordance with the results of the 2010 Census, the Property is now located in ANC 5A. ANC 5A was properly served with this time extension request and ANC 5A did not participate in this proceeding. The boundaries of ANC 5E are located within 200 feet of the property and ANC 5E was properly served with this request. ANC 5E did not participate in this proceeding.

Subsection 2408.10(b) requires that the Commission find 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. Based on the information provided by the Applicant and OP, the Commission concludes that extending the time period of approval for the first-stage PUD is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original first-stage PUD application.

Subsection 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 second-stage PUD application for the remainder of the property. The Commission notes the actions taken by the Applicant with GSA and the District of Columbia Government to amend the Statement of Non-Disturbance to allow other compatible uses, including residential uses, and the discussions with the surrounding property owners to seek their input on compatible uses that could be included in the remainder of the project. The Commission also notes that this time extension request is supported by the Deputy Mayor for Planning and Economic Development. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR§ 2408.11(c) regarding the first-stage PUD application. The Commission notes that the Applicant originally requested that the time extension be granted to December 25, 2016. Given the holiday season, the Commission believes that it is appropriate to grant the time extension to December 31, 2016.

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. As noted above, ANC 5A and ANC 5E were properly served with this time extension request but did not participate in this proceeding.

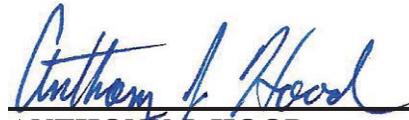
The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations. OP did not oppose this time extension request.

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** of a time extension of the first-stage PUD application approved in Z.C. Order Nos. 08-33 and 08-33A through 08-33D. The first-stage PUD approved by the Commission shall be valid until December 31, 2016, within which time the Applicant will be required to file a second-stage PUD application with the Commission.

On February 8, 2016, upon motion by Commissioner Turnbull, as seconded by Chairperson Hood, the Zoning Commission **APPROVED** the application and **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, Michael G. Turnbull to approve and adopt).

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 March 11, 2016.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING