

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 08-34B**  
**Z.C. CASE NO. 08-34B**  
**Center Place Holdings, LLC**  
**(Time Extension for Consolidated PUD @Squares 564, 566, and 568)**  
**May 20, 2013**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on May 20, 2013. At the meeting, the Commission approved a request from Center Place Holdings, LLC ("Applicant") for a time extension for an approved consolidated planned unit development ("PUD") for Lot 59 in Square 564, Lot 49 in Square 566, and Lot 44 in Square 568 ("Property"), pursuant to Chapter 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

**FINDINGS OF FACT**

1. By Z.C. Order No. 08-34, the Commission approved a first-stage PUD ("First-Stage PUD") for the entire site, a consolidated PUD ("Consolidated PUD") for elements of the development, and a PUD-related change to the District of Columbia Zoning Map to C-4. The Consolidated PUD included the following elements: (1) the construction of the entire platform; (2) the proposed mix of uses, the height and density of each building, and site plan for the overall project; (3) the construction of the office building in the North Block; (4) the construction of all below-grade parking, concourse and service levels; and (5) the proposed landscaping and streetscape design for the overall PUD Site. Z.C. Order No. 08-34 became effective upon its publication in the *D.C. Register* on July 1, 2011.
2. Condition No. 27 of Z.C. Order No. 08-34 provides that the approval for the Consolidated PUD is valid for a period of two years from the effective date of the order (i.e., July 1, 2011) and that construction of the platform and base infrastructure must begin within three years of the effective date of the order. Accordingly, the Applicant is required to file an application for a building permit for the construction of the platform and base infrastructure within two years of the effective date of the order, or July 1, 2013, with construction to begin no later than July 1, 2014.
3. Condition No. 28 of Z.C. Order No. 08-34 approved the First-Stage PUD for a period of five years from the effective date, with the Applicant required to apply for a second-stage PUD for an additional portion of that project within that time period. The Applicant applied for a second-stage PUD for the South Block on June 4, 2012. The South Block second-stage PUD was approved by Z.C. Order No. 08-34A, issued effective as of March

8, 2013. Second-stage PUD applications must be filed for all of the remaining portions of the project no later than 10 years from the effective date of the order.

4. By letter dated and received by the March 21, 2013, the Applicant filed a request asking the Commission to (1) approve an extension of the date by which the Applicant must submit a permit application for the construction of the platform and base infrastructure by a period of approximately 18 months, to December 31, 2014; (2) specify the type of permit for which that application must be filed within that time period; and (3) relate the timeframe by which construction must commence, to be within nine months of the issuance of the public space permit. The Applicant's request was supported by exhibits showing the progress of the project thus far and evidence concerning the facts impacting the Applicant's ability to move forward with the platform and base infrastructure approved in the Consolidated PUD, as described in Findings of Fact 5 through 7 below.
5. The Applicant has been working for more than seven years to make this project a reality by advancing the designs of the platform and base infrastructure as well as of the buildings relating to this PUD. The Applicant closed on the purchase of the Property in December, 2012, having expended more than \$100 million in acquisition and entitlement costs by that point.
6. The required National Environmental Policy Act ("NEPA")/Environmental Assessment process involving both the Federal Highway Administration ("FHWA") and the District Department of Transportation ("DDOT") took longer than expected. In addition, the result of the NEPA process was a reconfiguration of the proposed Freeway portals as compared to the original proposal. The modifications created new design and engineering considerations that the Applicant's team is now addressing.
7. In addition to the delay from the NEPA process, the Applicant has been working with DDOT to establish a unique permit process that will allow the Applicant to construct such a complex project. Unlike a traditional development project, in which an applicant submits a building permit to commence construction, this project will require extensive utility relocation as a precursor to the foundation to grade construction work. Specifically, a major water main within Massachusetts Avenue will need to be relocated and reconstructed to allow for the southbound portal to be constructed. In addition, there are more than 18 conduits for copper and fiber optic cables which must be relocated to allow for the construction of the portal.
8. The Applicant served a copy of the request on all parties, including Advisory Neighborhood Commission ("ANC") 2C and ANC 6C on March 21, 2013.
9. On May 6, 2013, the Office of Planning submitted a report in support of the request. (Exhibit ["Ex."] 6.)

10. By letter dated April 16, 2013, ANC 2C indicated that at a regularly scheduled meeting of the ANC with a quorum present, the ANC voted unanimously to support the extension request. (Ex. 5.)
11. By letter dated May 11, 2013, ANC 6C indicated that at a regularly scheduled meeting of the ANC with a quorum present, the ANC voted unanimously to support the extension request. (Ex. 8.)
12. At its public meeting on May 13, 2013, the Commission considered the application. The Commission requested that the Applicant further clarify its request for the extension. By letter dated May 16, 2013, the Applicant provided clarification to the Commission's request. (Ex. 7.)
13. At its public meeting on May 20, 2013, the Commission considered the application. The Commission requested that the Applicant provide further clarification to the timeframe for the request and provide a specific timeframe for the building permit application for the platform and base infrastructure as well as for the utility relocation. The Applicant provided that information to the Commission at the public meeting and submitted it in writing by letter dated May 24, 2013. (Ex. 10.)
14. The Commission finds that the Applicant cannot move forward at this time with a building permit for the Consolidated PUD, despite the Applicant's diligent, good faith efforts, because of conditions and factors beyond the applicant's reasonable control which render the applicant unable to comply with the time limits of the PUD order. Therefore, this request for extension satisfies the sole criterion for good cause shown as set forth in § 2408.11(c) of the Zoning Regulations and the Commission finds that the request should be granted.

### **CONCLUSIONS OF LAW**

1. 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.) Subsection 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.

2. The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.
3. 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.
4. The Commission is required under D.C. Code § 1-309.10(d) (2001) to give great weight to the affected ANC's recommendations. Both ANC 2C and ANC 6C supported the request, and the Commission has provided the great weight to which the ANCs are entitled.
5. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11(c). Specifically, the Applicant is unable to comply with the time limits for the Consolidated PUD set forth in Order No. 08-34 due to a delay in the NEPA process and due to the modifications that resulted from the NEPA process, despite the Applicant's diligent good faith efforts.
6. Subsection 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.
7. 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.
8. 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 request for an extension of the Consolidated PUD in Z.C. Case No. 08-34 and orders that Condition No. 27 is replaced in its entirety with the following:

The Consolidated PUD approved by the Commission shall be valid until December 31, 2014. By that date, an application must be filed for a public space permit for the utility relocation. Within nine months of the issuance of the utility relocation permit, the Applicant shall commence construction of the utility relocation work. Within 30 months of the issuance of the utility relocation permit, the Applicant shall apply for a building permit for the construction of the platform and base infrastructure. Construction of the platform and base infrastructure shall begin within one year of the issuance of that building permit. Within two years of the completion of the construction of the platform and base infrastructure, the Applicant shall apply for a building permit for the construction of the North Block. The Applicant shall commence construction of the North Block within four years of the completion of the construction of the platform and base infrastructure.

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 identify 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 20, 2013, upon the motion made by Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order by a vote of **5-0-0** at its public meeting (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Peter G. May to adopt; Michael G. Turnbull to adopt by absentee ballot).

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 July 5, 2013.

  
\_\_\_\_\_  
ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION

  
\_\_\_\_\_  
SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING