

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-26A
Z.C. Case No. 10-26A
3321 Georgia, LLC
(Two-Year PUD Time Extension @ Square 3040)
July 25, 2013

Pursuant to notice, a special public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on July 25, 2013. At the meeting, the Commission approved a request on behalf of 3321 Georgia, LLC ("the Applicant") for a two-year extension of time period in which to file a building permit for the construction of a mixed-use development composed of retail and residential uses, which was approved in Z.C. Order No 10-26.

FINDINGS OF FACT

1. Pursuant to Z.C. Order No. 10-26, the Commission granted applications for consolidated approval of a Planned Unit Development ("PUD") and a related zoning map amendment to amend the Zoning Map from the GA/C-2-A Zone District to the GA/C-2-B Zone District for property located at Lot 130 in Square 3040 ("the Subject Property"). The Subject Property consists of approximately 22,002 square feet of land area and is located on the southeast corner of Georgia Avenue, N.W. and Morton Street, N.W.
2. The approved PUD includes construction of a mixed-use development composed of retail and residential uses. The project will have a maximum floor area ratio ("FAR") of 5.37, and will include approximately 82,801 square feet of residential uses, comprised of 112 units (plus or minus 10%), and approximately 7,190 square feet of new retail uses. A total of eight percent of the residential gross floor area devoted to residential use will be dedicated as affordable to households earning up to 80% of the area median income. The building will have a maximum building height of 90 feet and will have 50 off-street parking spaces located in a below-grade garage.
3. Z.C. Order No. 10-26 became final and effective upon publication in the *D.C. Register* on September 2, 2011. Z.C. Order No. 10-26 requires the Applicant to file a building permit application for the approved PUD no later than September 2, 2013, with construction to start no later than September 2, 2014.
4. By letter dated June 13, 2013, the Applicant filed an application and supporting materials requesting a two-year extension of Z.C. Order No. 10-26 such that a building permit

application for the PUD must be filed no later than September 2, 2015, with construction to start no later than September 2, 2016. (Exhibit ["Ex."] 1).

5. The Office of Planning ("OP") submitted a report dated July 12, 2013 indicating that the Applicant meets the standards of § 2408.10 and 2408.11 of the Zoning Regulations. (Ex. 6.) OP thus recommended that the Commission approve the requested two-year PUD extension.
6. Advisory Neighborhood Commission 1A ("ANC") submitted a resolution indicating that at the regularly scheduled meeting on June 12, 2013, at which notice was properly given and a quorum was present, ANC 1A voted 9-0-1 to support the requested extension. (Ex. 5.)
7. As to the merits, the Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. (Ex.1.) The Applicant has taken many steps to move forward with the development which is the subject of this application, including the following:
 - a. Worked diligently to secure financing for the project and has met with numerous potential lenders and other financing sources, but due to the volatility in the industry has been unable to secure project financing or attract a joint venture partner;
 - b. Engaged Marcus & Millichap, a global real estate agency to market the property to potential third-party purchasers;
 - c. Worked with MAC Realty, a real estate advisory firm to evaluate the development plan and determine how to best attract interest from equity and debt capital sources;
 - d. Received a letter of interest from J.P. Morgan Chase expressing its commitment to purchase tax exempt bonds for the purpose of making a loan to finance the project;
 - e. Received a letter of interest from Wells Fargo expressing its interest in acquiring Federal Low Income Housing Tax Credits and providing financing for the project;
 - f. Submitted applications to D.C. Department of Housing and Community Development ("DCHD") seeking funding for the project in 2013 and 2012; and
 - g. Invested more than \$3 million dollars in the property since 2010.

8. Despite the Applicant's good faith efforts, the Applicant has been unable to obtain financing for the approved project, and as the Commission has recognized in approving recent extension requests, the real estate market has been subject to, and continues to suffer from, severe financing, construction, and leasing impediments.
9. The Commission finds that the approved development cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control. The Commission further finds that this request for extension satisfies the sole criterion for good cause shown as set forth in § 2408.11(a) of the Zoning Regulations.

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 Zoning 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 § 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 issues and concerns raised in the affected ANC's written recommendation. ANC 1A submitted a resolution indicating that at the regularly

scheduled meeting on June 12, 2013, at which notice was properly given and a quorum was present, ANC 1A voted 9-0-1 to support the requested extension. (Ex. 5). The Commission carefully considered the ANC's recommendation in its deliberations, and has given ANC 1A's recommendation great weight in approving this application.

5. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. OP submitted a report indicating that the Applicant meets the extension standards of the Zoning Regulations, and therefore recommended that the Commission approve the requested extension. The Commission carefully considered OP's recommendation in its deliberations, and has given OP's recommendation great weight in approving this application.
6. 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(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 changes in economic and market conditions beyond the Applicant's reasonable control.
7. 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.
8. 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.
9. 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 time extension of the validity of Z.C. Order No. 10-26, such that an application must be filed for a building permit for the PUD no later than September 2, 2015, and construction to must start no later than September 2, 2016.

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 July 26, 2013, upon the motion made by Michael Turnbull as seconded by Robert Miller, the Zoning Commission **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, and Michael G. Turnbull) to 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*; that is, on November 8, 2013.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING