

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-08A**

Z.C. Case No. 11-08A

Il Palazzo, LLC

**(One-Year Time Extension for an Approved Planned Unit Development and Zoning Map
Amendment @ Square 2578, Lot 26)**

April 15, 2014

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) considered a request from Il Palazzo LLC (“Applicant”) for a one year extension of the planned unit development (“PUD”) approved in Z.C. Case No. 11-08. The time extension request was made pursuant to Chapter 24 of the District of Columbia Zoning Regulations. The Commission voted to approve the request without a public hearing at its public meeting on April 14, 2014. The reasons for its approval are stated below.

FINDINGS OF FACT

Case Background

1. On March 12, 2012, the Commission issued Z.C. Order No. 11-08 approving a residential PUD at Square 2578, Lot 26, more commonly known as 2700 16th Street, N.W. (“Property” or “Subject Property”). (Exhibit [“Ex.”] 1, Tab A.)
2. The Subject Property consists of approximately 43,494 square feet of land area. The Subject Property is bounded by 16th Street, N.W. to the east, Mozart Place, N.W. to the west, Fuller Street, N.W. to the south and property of the Scottish Rite Temple to the north. The Property is located just south of Columbia Road. (Ex. 1, Tab A.)
3. The Property is split-zoned: the eastern portion of the Property is located in the R-5-D Zone District and the western portion is located in the D/R-5-B Zone District in the Diplomatic Overlay. All of the properties along 16th Street, to the north, south, and east, are located in the R-5-D Zone District. (*Id.*)
4. The Applicant requested approval of a PUD-related map amendment for the portion of the Property located in the D/R-5-B Zone District to the R-5-D Zone District. (*Id.*)
5. The approved PUD includes 60-90 spaces of below-grade parking and 110-135 residential units, including six affordable units, at least five of which will be two-

bedroom family units to be reserved for households with an annual income no greater than 80% of the Area Median Income. (*Id.*)

6. Z.C. Order No. 11-08 was valid for a period of two years, within which time an application for a building permit was required to be filed.
7. On March 7, 2014, the Applicant filed a request to extend the PUD approval for a period of two years. (Ex. 1.)
8. The request was placed on the Commission's April 14, 2014, meeting agenda, at which time the Commission took action to approve a one-year extension of the consolidated PUD and PUD-related map amendment. The PUD was extended through March 9, 2015.

Extension Request

9. Subsection 2408.10 of the Zoning Regulations grants the Commission the authority to extend a consolidated PUD approval. The Commission must determine whether (a) the extension request was served on all parties to the application by the Applicant and that parties were given at least 30 days to respond; (b) there was 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 (c) the Applicant demonstrated with substantial evidence that there was good cause for such extension.
10. The Applicant satisfied each of the three standards. With respect to the first prong, the request was served on the only party to this case, Advisory Neighborhood Commission ("ANC") 1C. By letter dated September 11, 2014, ANC 1C stated that it had no objection to the time extension¹. (Ex. 6.)
11. The subject neighborhood has not undergone any significant changes since the PUD was initially granted. (Ex. 1.)
12. The Comprehensive Plan designation and zoning designation for the Property and surrounding property remains unchanged. The Commission voted to approve the PUD in 2011. The Order was issued in 2012.
13. The Applicant noted that it had assumed the lead in developing the project only 12 months prior to the expiration of the PUD approval, impeding its ability to timely file for building permits. (Ex. 1, 4.)

¹ The Applicant notified ANC 1B when it filed its time extension. This was an error because only ANC 1C participated as a party in the original case. The Applicant notified ANC 1C when it discovered this error.

14. Despite having recently assumed leadership of the PUD, the Applicant made numerous efforts to meet the deadline for submitting an application for a building permit. It included an affidavit with its extension request that outlined the efforts it made to implement the PUD approval during those 12 months:
 - Retained Davis Carter Scott to prepare the permit plans. Davis Carter Scott finalized the plans for final submission;
 - Hired Clark as the general contractor for the project;
 - Established a marketing campaign for the residential units and retained a firm to market the units;
 - Secured a demolition permit on July 26, 2013 for the stand alone garage on the Property;
 - Submitted an application for a sheeting and shoring permit on February 24, 2014;
 - Submitted its Environmental Impact Screening Form on August 29, 2013. In response to comments on the EISF, The Garrett Companies resubmitted the form on January 28, 2014;
 - Submitted a site plan to DC Water and the District Department of the Environment in February 2014 for final review; and
 - Submitted an application for approval of improvements in public space in February 2014.
15. ANC 1C submitted a letter into the record to indicating its support for a one-year time extension.
16. The Office of Planning (“OP”) submitted a report dated April 4, 2014. OP recommended approval of the time extension request and noted the Applicant’s fulfillment of the standard promulgated in § 2408.10 of the Zoning Regulations. OP noted that there had been a change in the ownership entity that delayed the permitting process, which made compliance with the PUD deadlines beyond the Applicant’s control. (Ex. 4.)
17. Though the Applicant requested a two-year time extension, it noted that it anticipated filing for its building permits in April 2014; accordingly, the Commission found that a one-year extension was justified, but that a two-year extension was not justified.

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11 DCMR §§ 2408.10, 2408.11, and 2408.12 are satisfied. Subsections 2408.10 and 2408.11 give the Commission the authority to extend the validity of a consolidated PUD approval. Subsection 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 Applicant served the only party, ANC 1C with notice of the extension request, and by letter dated September 11, 2014, ANC 1C stated that it had no objection to a one-year extension.

Section 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. The Commission concludes that extending the time period of approval is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original PUD application.

Finally, § 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 of the validity of the PUD. The Commission also finds that the Applicant has made good faith efforts to effectuate the PUD and has demonstrated that it is pursuing its building permit to begin construction as soon as possible.

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 paragraph 16 above). OP recommended approval of the time extension request and the Commission concurs in its recommendation.

For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR § 2408.10 and 2408.11.

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 Z.C. Case No. 11-08A for a one-year time extension of Z.C. Order No. 11-08. The validity of the PUD is extended until March 9, 2015, within which time a building permit for the approved PUD must be filed. Construction must start on the PUD prior to March 9, 2016.

For the reasons stated above, the Commission concludes that the Applicant has met its burden; it is hereby **ORDERED** that the request be **GRANTED** for a one-year period.

On April 15, 2014, upon motion by Commissioner May, as seconded by Commissioner 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* on October 17, 2014.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING