

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 453A

Z.C. Case No. 84-19A

Modification to the Approved Planned Unit Development
(World Wildlife Fund, Inc.)

January 12, 2009

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public meeting on December 4, 2008. At the meeting, the Commission approved an application from the World Wildlife Fund, Inc. (the “Applicant”) for a modification to an approved planned unit development (“PUD”) for the property in Square 24, Lot 112, located at the street address 1250 24th Street, N.W. (the “Property”). This PUD modification is authorized pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations (the “Regulations”). The Commission determined that this modification request was properly before it under §§ 2409.9 and 3030 of the Regulations.

FINDINGS OF FACT

Preliminary Matters

1. By Zoning Commission (“Z.C.”) Order No. 453, dated April 8, 1985, the Commission approved the PUD for Lot 112 in Square 24 (the “Approved PUD”). Z.C. Order No. 453 approved the development of a commercial office building consisting of approximately 209,000 square feet of gross floor area, a height not to exceed 90 feet, and 4.5 FAR. The order required parking for 141 vehicles and that 17,000 square feet on the ground floor (the “Space”) be devoted to retail sales or services, restaurants, or theater uses.
2. The previous owner of the Property filed a request for modification of an approved planned unit development on June 20, 1989, citing an inability to lease the Space since completion of construction. This request was opposed by Philip J. Brown, who provided evidence that the Space had been leased. Based on the fact that the Space had been leased, the Commission denied set down of the 1989 modification request.
3. On August 7, 2007, the Applicant, now the record owner of the Property, filed a request for modification to an approved planned unit development seeking removal of the retail sales or services requirement (“Condition No. 4”) of the Order (the “Modification Request”). The Applicant cited an inability to keep the Space leased for retail uses due to a lack of pedestrian traffic and lack of visibility from the street, and requested unrestricted use of the Space for uses permitted in the CR Zone District. Currently, Condition No. 4 of the Order requires the Applicant to maintain a minimum of 17,000

square feet of floor area for “retail sales or services, restaurants, or private or public theaters.” In all other respects, the project would remain fully consistent with the approved order.

4. On October 5, 2007, the Office of Planning (“OP”) recommended that the Commission set down the Modification Request for hearing and that the Applicant work with OP to develop a more detailed description of the uses it felt were appropriate for the Space, and to provide additional information including the efforts to lease the Space, the length and amount of the vacancy, and outreach efforts to the arts community. The Commission set the request down for a public hearing on October 15, 2007.
5. The Applicant filed a prehearing statement on September 26, 2008, and a hearing was scheduled for December 4, 2008 (the “Public Hearing”).
6. OP filed a report on November 24, 2008, which did not make a final recommendation because it requested additional information regarding the Applicant’s inability to lease the Space as originally proffered and more details regarding its efforts to “green” the building. OP stated that all other conditions of approval have been satisfied and the other public benefits and amenities offered as part of the original approval have largely been met. OP noted in its report that it had attempted to reach the ANC but no response was received.
7. The Commission held a public hearing on the above-mentioned application on December 4, 2008, which was conducted in accordance with the provisions of 11 DCMR § 3022.
8. At the hearing, after the Applicant stated that it did not have the requested data available regarding its efforts to “green” the building because it had not yet finalized these plans, OP stated that its remaining concern was that the PUD provide sufficient benefits and amenities to justify the relief provided, given that the Applicant was requesting that the Commission delete one of the benefits and amenities that the Commission relied on in approving the project.
9. At the conclusion of the hearing, the Commission took proposed action to approve the application by a vote of 4-0-1.
10. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated December 31, 2008, found that the proposed PUD would not have an adverse effect on federal interests nor be inconsistent with the Comprehensive Plan for the National Capital.
11. Advisory Neighborhood Commission (“ANC”) 2A, the ANC in which the Property is located, is automatically a party to this application. No comment was received from ANC 2A in this case.

Merits of the Request

12. The building has been the headquarters of the Applicant for more than twenty years, and while originally a tenant, the Applicant purchased the building in 2000 and currently occupies 46% of the building, leasing out the remaining office and retail spaces. The Space has been vacant since early 2007 when both tenants ceased operations, which has resulted in lost rental income of approximately \$900,000, a figure that continues to grow at a rate of approximately \$39,000 a month. Despite its inability to lease the Space and the financial hardships that have resulted, the Applicant remains an active member of the West End community, coordinating blood drives, working on Earth Day projects at local schools and parks, and initiating the “greening” of the building to obtain LEED certification.
13. The Space consists of two separate retail spaces of approximately 8,450 square feet each, which are separated by an interior atrium and cannot be combined. The Space has proven to be an inadequate location for a variety of retail uses over the past decade, including multiple restaurants and an office supply store. The Space has been listed on an on-line listing service for brokers and has been shown several times, but due to the lack of pedestrian traffic, the location of the Space, which is set back from the street and below grade, and the limited area for signage, prospective tenants have determined that the Space is not suitable for their retail operations. There have also been inquiries from non-retail businesses which would not, under the current terms of the order, be permitted to operate in the Space, such as public relations and architectural firms. Other suitable uses for the Space include professional services firms, a day care (although there is a competing use located on the Property), and additional office space for the Applicant.
14. There is no other retail located along this block of 24th Street which is visible from the street, and that the street is predominantly characterized by residential and hotel uses.
15. Diana Horvat, AIA, IIDA, LEED AP, Architect with Envision Design, was accepted by the Commission as an expert in commercial interior architecture and testified at the Public Hearing. The Board accepts Ms. Horvat’s conclusion that the Space is not suitable for retail uses because of the low floor-to-ceiling heights (9 feet), the poor visibility from the street, and the location of the Space, which is set back from the street and below grade. Ms. Horvat also testified, and the Commission agrees, that the two separate retail spaces cannot be combined and would not be large enough for use as a public or private theater.
16. Ms. Horvat also represented that the Applicant, in line with its mission as a conservation organization and with the ultimate goal being certified as a LEED Platinum building, intends to transform its building with a variety of sustainable/green elements and initiatives, including: retrofitted electrical and mechanical systems, possible construction of a green roof, and an emphasis on recycling and the use of green cleaning products

throughout the building, but that as a non-profit organization, the sustainability efforts were driven by budget concerns.

CONCLUSIONS OF LAW

After careful consideration of the issues presented before it, the Commission finds that the approval of the modification is appropriate.

First and foremost, the PUD regulations specifically contemplate a change in economic or market conditions beyond an Applicant's reasonable control to be grounds for extending the validity of a PUD order. (11 DCMR § 2408.11.) The Applicant's inability over the course of two years to fully lease the Space due to the lack of pedestrian traffic on 24th Street, the poor visibility from the street, the limited area for signage, and the low floor-to-ceiling heights which are uncharacteristic of retail space, combined with the difficulties facing retailers during the current economic downturn, require that the allowable uses of the Space be expanded to include *any* use permitted in the CR Zone District.

Second, while the Commission recognizes that the retail component in the Approved PUD was important to the community at that time and to the Commission's consideration of the PUD application, the Commission believes that it was not the sole amenity upon which the Approved PUD application was predicated. The Commission finds that the removal of Condition No. 4 would have no meaningful impact on the Approved PUD. Further, the Commission finds that the Applicant's efforts, independent of the Modification Request, to seek LEED certification and to make the building more environmentally-friendly, are consistent with the Applicant's mission and will further enhance the building and its relationship to the community.

Further, the Zoning Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purposes of the Zoning Regulations.

Finally, approval of the modification is not inconsistent with the Comprehensive Plan. The proposed modification continues the PUD's goal of preserving the east façade of the B&W Garage and providing other community benefits.

The Commission is required under 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. No such report was received in this case.

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 (as reflected in ¶ 10). The Commission considered the Office of Planning's concern that deletion of one of the project benefits and amenities that the Commission judged, balanced, and reconciled in approving the PUD could tip the balance against the approval of the project, but for the reasons stated above does not find their advice to be persuasive.

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 modification of the approved PUD. Condition No. 4 of Z.C. Order No. 453 is revised to read as follows:

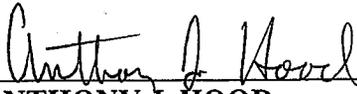
- “4. The building shall be limited to office use, except the ground floor, which may contain any use permitted in the CR Zone District.”

The Owner is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”). This Order is conditioned upon full compliance with those provisions. In accordance with the 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 identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Owner to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

Vote of the Zoning Commission taken at the conclusion of the public hearing on July 28, 2008 to **APPROVE** the application by a vote of **4-0-1** (Peter G. May, Michael G. Turnbull, Anthony J. Hood, and Gregory N. Jeffries to approve; the third Mayoral appointee position vacant, not voting).

The Zoning Commission took final action to **ADOPT** this modification at its public meeting on January 12, 2009, by a vote of **3-0-2** (Michael G. Turnbull, Peter G. May, and Anthony J. Hood to approve; Gregory N. Jeffries, not present, not voting; the third Mayoral appointee position vacant, 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*; that is, on JAN 30 2009.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



RICHARD S. NERO, JR.
ACTING DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 84-19A

JAN 27 2009

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 453A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Kinley Dumas Bray, Esq.
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1050 Connecticut Avenue, N.W.
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3. Asher Corson, Chair
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4. Commissioner Lowell Thomas
ANC/SMD 2A02
2425 L Street, N.W., #312
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5. Gottlieb Simon
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1350 Pennsylvania Avenue, N.W.
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6. Councilmember Jack Evans
7. Office of Planning (Harriet Tregoning)
8. DDOT (Karina Ricks)
9. Zoning Administrator (Matthew LeGrant)
10. General Counsel – DCRA
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Suite 9400
Washington, D.C. 20002
11. Office of the Attorney General
(Alan Bergstein)

ATTESTED BY:

A handwritten signature in cursive script, appearing to read "S. S. Schellin", is written over a horizontal line.

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning