

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 496-B

Case No. **85-19C**

(PUD & Map Amendment @ St. Matthews Cathedral)

June 14, 1993

By Z.C. Order No. 496 dated November 3, 1986, the Zoning Commission for the District of Columbia approved an application of the Archdiocese of Washington, D.C. for consolidated review of a planned unit development (PUD) and related change of zoning for property located at 1717 Rhode Island Avenue, N.W.

The PUD site includes lots 85, 803, 841 and 843 in Square 159; measures 51,053 square feet in land area; and was proposed for rezoning from SP-1 to C-3-C. The PUD site is improved with the St. Matthews Cathedral and four church-owned row structures.

Z.C. Order No. 496 approved a proposal to renovate parts of the four row structures, retain the church sanctuary, and construct a new office building with a height of not more than 114 feet and a floor area ratio (FAR) of not more than 4.3.

The PUD approval was subject to compliance with certain guidelines, conditions, and standards. One of the conditions of approval states that:

"The planned unit development approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, an application must be filed for a building permit, as specified in Paragraph 7501.81 of the Zoning Regulations (now 11 DCMR 2406.8). Construction shall start within three years of the effective date of this order."

Z.C. Order No. 496 became effective on January 16, 1987. The validity of that order was for two years, until January 16, 1989.

Subsection 2406.10 of the Zoning Regulations allows the Zoning Commission to extend the validity of a PUD "for good cause shown", upon the request of the applicant being made prior to the expiration of the PUD.

By Z.C. Order No, 496-A dated January 14, 1991, the Zoning Commission approved the extension of the validity of the PUD until April 8, 1992, and if an application for a building permit is filed not later than that date, the validity of the PUD was extended until April 8, 1993 for construction to begin.

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In Z.C. Order No. 496-A, the Zoning Commission was aware of a question about whether the applicant filed a timely request to extend the validity of the PUD. However, the Zoning Commission found sufficient grounds to treat the request as if it were timely, and decided the request on the merits.

On April 8, 1990, the applicant filed an application for a building permit with the District of Columbia Department of Consumer and Regulatory Affairs. By doing so and pursuant to 11 DCMR 2406.9, the applicant had until April 8, 1993 to begin construction.

By letters dated November 25, 1992 and February 23, 1993, counsel for the applicant requested an additional two-year extension of the validity of Z.C. Order Nos. 496 and 496-A for the following reasons:

1. The applicant needs additional time to continue its efforts to secure lead tenants for the office building because the soft market conditions, at the time the first PUD extension was granted, have further deteriorated;
2. The applicant needs additional time to secure financing for the project because the recent dramatic changes in the financial market have made it difficult without a lead tenant in place;
3. The applicant believes that the project would make a worthwhile and sensitive contribution as a transition site between the Central Business District and the historic Dupont Circle neighborhood; and
4. The applicant has received approximately \$2,200,000 in ground rental payments which have been used to provide project amenities such as: maintaining and restoring the cathedral and rectory; hiring a Spanish-speaking priest to serve the needs of the Spanish-speaking parishioners; renovating the community meeting rooms; and enhancing the community programs and services that are offered by the church.

By memorandum dated December 7, 1992, the District of Columbia Office of Zoning (OZ) referred the applicant's request for extension to the District of Columbia Office of Planning (OP). The OZ referral requested OP to analyse the effect of the request on any amendments to the Zoning Regulations or Map, or the Comprehensive Plan since the Zoning Commission initially decided the PUD.

By letter dated December 30, 1992, Advisory Neighborhood Commission (ANC) 2B recommended that the Zoning Commission deny the applicant's request because of the following:

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1. That the approval of the PUD had already expired and that the Zoning Commission has no jurisdiction to revive it; and
2. That the PUD is not consistent with the current land-use policies and legal standards.

By letter dated January 4, 1993, counsel for the Hotel Tabard Inn and the Residential Action Coalition (RAC) opposed the applicant's request for extension, and supported the report of ANC-2B.

By letter dated January 5, 1993, the General Federation of Women's Clubs (GFWC) International recommended that the Zoning Commission deny the applicant's request.

By letter dated January 7, 1993, City Councilmember Jack Evans (Ward 2), urged the Zoning Commission not to grant the requested PUD extension for the following reasons:

1. That since the PUD was approved, the Generalized Land Use Map of the Comprehensive Plan was changed from the high density commercial category to the mixed-use medium density residential/medium density commercial category;
2. That in 1991, the Zoning Commission created the **Dupont** Circle Overlay District (DCOD) and mapped the DCOD, in part, to encompass the PUD site; and
3. That the purpose of the DCOD is to preserve those characteristics of **Dupont** Circle that make it unique: its low-scale, predominantly residential character, its independent small retail businesses, its human-scale streetscapes and its historic character.

By memorandum dated February 24, 1993, OP recommended approval of the applicant's request for a two-year extension to begin construction. OP stated the following:

"At the time of the approval of the PUD and map change, the site was designated for high density commercial land use on the 1985 Generalized Land Use Map of the Comprehensive Plan. Since that approval and the subsequent time extension for the project pursuant to Order No. 496-A, the Comprehensive Plan Generalized Land Use Map has been amended. The current Comprehensive Plan Generalized Land Use Map depicts the site's use and density being governed by the policies of two separate land use categories. Generally, the eastern half of the site is now located in an area designated for mixed-use, medium density residential/medium density commercial land uses. The western half of the site remains unchanged, designated for high density commercial land use.

A direct translation of medium density would produce either a C-3-A or a C-3-B zone district. With a PUD, the maximum commercial densities would range between 3.0 and 4.5 FAR. Total densities would range between 4.5 and 5.5 FAR. Thus, the approved PUD density of 4.3 FAR is not inconsistent with the density guidance provided by the amended Plan. Only the height, endorsed by the Historic Preservation Review Board at 114 feet, exceeds the limits (90 feet) of a direct translation of the Plan".

On March 8, 1993 at its regular monthly meeting, the Zoning Commission considered the applicant's request to extend the PUD, the report of ANC-2B and other correspondence in opposition, and the OP report. The Commission discussed the aforementioned issues and the question of whether the Commission should authorize a further public hearing and, if so, what would be the scope of the hearing.

After discussion, the Commission deferred action and requested OZ to solicit advice from the Office of the Corporation Counsel (OCC) about the following:

1. Whether the Commission can authorize a public hearing to consider an extension request, pursuant to 11 DCMR 2406.10; and
2. Whether the Commission can consider regulations enacted since the PUD was initially approved.

By memorandum dated May 4, 1993, OZ requested OCC to provide advice to the Zoning Commission about the aforementioned questions, or whether the Commission should limit its consideration of the applicant's request solely to the issue of "good cause shown". In response, OCC provided legal advice to the Zoning Commission. The advice is subject to the attorney - client privilege and was not included in the public record of the case.

On May 10, 1993 at its regular monthly meeting, the Zoning Commission determined that, on advice of counsel, it would not conduct a public hearing because the Zoning Regulations do not define or set forth criteria that establishes "good cause shown"; nor do they anticipate a hearing to establish "good cause shown" or to consider issues and regulations that now exist subsequent to initial approval of an application.

The Zoning Commission expressed anguish about the dilemma of having a PUD applicant implement a condition of approval in an original PUD that represents a significant monetary expenditure prior to

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developing the PUD project, and expressed concern about the extent to which that action on the part of the applicant should guarantee the continued validity of the PUD.

In addition, the Zoning Commission acknowledged that the complication of that dilemma arises out of the fact that, since the original PUD was approved, there have been changes in the Zoning Regulations, the Zoning Map, and the Comprehensive Plan that affect the PUD site and the neighboring area, which would further restrict the level of development for the PUD site, if the original PUD proposal were made today.

The Zoning Commission believes that, upon balancing all of the issues in this matter, "fairness" would dictate that the review of this request for an extension of the validity of a PUD should be based solely on demonstrating "good cause" shown to the satisfaction of the Commission, as has been the case in all such previous similar requests.

The Zoning Commission also believes that, because of the favorable processing of previous extension requests and the lack of regulations that would assist in the review of such requests, an extension of time in this instance as requested by the applicant is not unreasonable.

The Zoning Commission further believes that its decision to extend the validity of the PUD is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations and Zoning Act.

The Zoning Commission determined that it would further consider the issue of what constitutes "good cause" shown in a separate proceeding.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders that the validity of Z.C. Order Nos. 496 and 496-A be EXTENDED for a period of two-years; that is, until April 8, 1994, by which time application for a building must be filed. Subject to 11 DCMR 2406.8, construction must begin no later than April 8, 1995.

Vote of the Zoning Commission taken at the monthly meeting on May 10, 1993: 3-1 (John G. Parsons, William L. Ensign, and **Maybelle** Taylor Bennett, to extend - Tersh Boasberg, opposed and Lloyd D. Smith, not present not voting).

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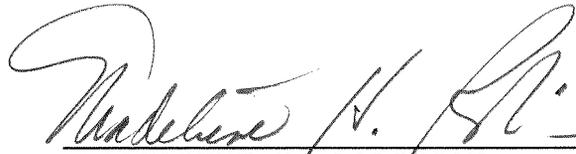
This order was adopted by the Zoning Commission at the public meeting on June 14, 1993 by a vote of 3-1 (John G. Parsons, William L. Ensign and **Maybelle** Taylor Bennett, to adopt as amended - Tersh Boasberg, opposed and Lloyd D. Smith, not present not voting).

In accordance with provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on

JUL 16 1993.



**MAYBELLE TAYLOR BENNETT**  
Chairperson  
Zoning Commission



**MADELIENE H. ROBINSON**  
Director  
Office of Zoning

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