

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 496-C

Case No. **85-19C**

(PUD and Map Amendment @ 1717 Rhode Island Avenue, N.W. -  
St. Matthews)

July 10, 1995

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.

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. 456-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.

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, 496-A. The following is the summary of the applicant's reasons for the extension request:

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1. The applicant needs time to secure a lead tenant, since the prevailing soft market conditions and the recent dramatic changes in the financial market have made it difficult to secure financing without a lead tenant.
2. 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 community; making meeting rooms available to the community; and enhancing the community programs and services that are offered by the church.

By memorandum dated February 24, 1993 and in response to the District of Columbia Office of Zoning (OZ) referral for analysis of the effects of the extension on the Zoning Regulations and map, and the Comprehensive Plan since the Commission initially approved the PUD, the Office of Planning (OP) recommended approval of the applicant's request for a two-year extension to begin construction.

By Z.C. Order No. 496-B, the Commission extended the validity of Z.C. Order Nos. 496 and 496-A for a period of two-years; that is, until April 8, 1994, by which time application for a building permit must be filed, and construction must begin no later than April 8, 1995.

On February 16, 1995, the law firm of Wilkes, Artis, Hedrick and Lane on behalf of the applicant filed a motion for further extension of Z.C. Order Nos. 496, 496-A and 496-B pursuant to Subsection 2406.10.

The motion indicated that the opponents of the PUD approval have challenged Z.C. Order No. 496-B in court, and that the pendency of the litigation constitutes "good cause" for the Commission to further extend the orders.

Additionally, the motion pointed out that in granting past extensions, the Zoning Commission determined that adverse economic conditions constitute good cause for granting extensions. Furthermore, the Commission has granted extensions when applicants have provided major project amenities up front. The motion further states that the applicant in this case has provided major project amenities and construction has not proceeded at full speed because of adverse economic conditions. The pending litigation makes securing financing more difficult.

By memorandum dated March 9, 1995, the District of Columbia Office of Zoning referred the motion for extension to the OP for analysis of whether any amendments to the Zoning Regulations or Map or to

the Comprehensive Plan since the Commission initially decided this case, will affect this motion for extension.

In a letter dated March 27, 1995, the Advisory Neighborhood Commission (ANC) 2B restated its opposition to the extension of Z.C. Order Nos. 496, 496A and 496-B. The ANC's letter indicated that the ANC voted unanimously to oppose the extension because of the substantial changes made to the building plan, changes made to the Comprehensive Plan in 1989 by the Council of the District of Columbia designating the area including the site of the PUD as mixed-use medium density residential and commercial, and the changes relating to the zoning of the area by the Zoning Commission approval of the Dupont Circle Overlay District.

ANC-2B also requested that the Zoning Commission convene a public hearing on this request for extension. There have been significant changes in the Comprehensive Plan and zoning of the subject site since the PUD approval in 1986, legal questions about the expiration of the original PUD order, and the stated inability of the applicant to secure a tenant and financing for the original PUD project are factual matters within the scope of a "contested case" that raise significant questions about "good case shown" and the continued extensions of this 1986-approved PUD. Accordingly, ANC 2B believes that the public interest in this case calls for the Zoning Commission to schedule a public hearing.

The Residential Action Coalition and the Hotel Tabard Inn, submitted letters to the record of the case opposing the motion for extension citing the following reasons:

1. The time for renewal has expired. The Zoning Regulations and the Comprehensive Plan have changed substantially in regard to the site. In lieu of outright denial, the Commission is required to hold a public hearing.
2. Pending litigation can in no way afford the Zoning Commission the excuse to renew this PUD yet another time, particularly since the rules do not provide for discretionary extensions for PUDs. A change made in the Zoning Regulations since the PUD was first approved in the 1980's eliminates the provision allowing the Zoning Commission to renew a PUD without a hearing.
3. The Dupont Circle Overlay approved by the Zoning Commission in the early 1990's prohibits this PUD. The reality of the overlay is a circumstance the Zoning Commission cannot ignore. Neither can the Commission deny that this PUD is in violation of the Comprehensive Plan designation for this area which mandates mixed use medium density residential and commercial on this site.

4. If PUDs can be renewed by the Zoning Commission with no public hearing despite important changes in the Zoning law regarding the site and despite changes in the Comprehensive Plan, the Zoning Commission is acting as an agent for landbanking operations which can be renewed by the Zoning Commission forever in complete disregard of the community and the law. This is a violation of orderly development and of the intent of the Zoning process and the Zoning law.

By memorandum dated April 27, 1995, the OP recommended approval of the motion for a two-year extension to begin construction. OP stated that its analysis concludes the following:

"The approved PUD is still viable and desirable. Both the preservation of the rowhouses along Rhode Island Avenue and the rehabilitation of St. Matthews Cathedral would contribute greatly to the historic character of the Dupont Circle area. Finally, since 1985, the applicant has paid \$2.2 million to the Archdiocese of Washington, D.C. (the owner of the site in question) in connection with its ground lease of the property. Over the past eight years, the ground lease payments have been used to accomplish the restoration and maintenance of St. Matthews Cathedral and other programs outlined in the original project amenities package. Accordingly, the Office of Planning recommends approval of the applicant's request for an additional two-year time extension for the commencement of construction of the subject PUD".

On May 23, 1995, at its regular monthly meeting, the Zoning Commission considered the applicant's motion for extension, the report of the ANC-2B, other correspondence in opposition, and the OP report. The Commission was not persuaded that authorizing a further public hearing for a motion for extension is in conformance with the rules of practice and procedure of the Zoning Commission and further finds the following as the basis for the extension:

1. Many of the developers of PUDs which were approved between 1985 and 1990 are currently seeking extensions of the original approval periods. Unfavorable economic market conditions are largely responsible for this occurrence, even though the previous unfavorable market conditions are beginning to improve.
2. The applicant remains committed to the completion of the project, hence approximately \$8.9 million has already been expended by the applicant in actual development of the project. Additionally, the applicant has provided significant up front project amenities as contained in Z.C. Order No. 496.

3. Pending litigation and delays in securing partial demolition and building permits are resulting in the applicant's inability to commit to a construction schedule for a potential tenant and are encumbering the project's financing.

The Commission evaluated the concerns raised by **ANC-2B**, but does not concur with the ANC that an additional hearing is desirable even though 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 Commission noted that the PUD was approved prior to the enactment of the Dupont Circle Overlay District (DCOD), and is therefore not subject to the DCOB provisions. Additionally, the Commission noted that the PUD density of 4.3 FAR is not inconsistent with the density guidance of the Comprehensive Plan, as amended. The Plan designations for the site translate into zone districts that allow PUD commercial densities between 3.0 and 4.5 FAR, and total densities ranging between 4.5 and 5.5 FAR. Only the height, endorsed by the Historic Preservation Review Board at 114 feet, exceeds the 90-foot limit which results from a direct translation of the Plan.

The Zoning Commission expressed concern about the dilemma of a PUD applicant who has implemented a condition of approval in an original PUD that represents a significant monetary expenditure prior to having developed the PUD project. The Commission was also concerned about the extent to which that action on the part of the applicant should guarantee the continued validity of the PUD.

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, consequently, the Commission determined that the applicant has demonstrated "good cause" by documenting adverse market conditions and by providing substantial up front amenities.

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.

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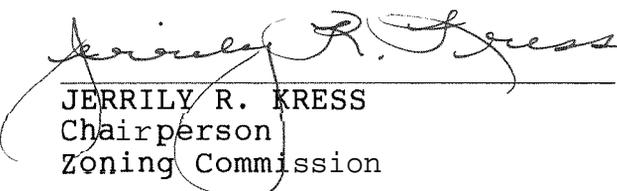
In consideration of the Commission's findings and the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders that the validity of Z.C. Order Nos. 496, 496-A and 496-B be EXTENDED for a period of two-years; that is until April 8, 1996, by which time application for a building permit must be filed. Subject to 11 DCMR 2406.8, construction must begin no later than April 8, 1997.

Vote of the Zoning Commission taken at the monthly meeting on May 23, 1995: 4-0 (Maybelle Taylor Bennett, William L. Ensign and Jerrily R. Kress, to extend, and John G. Parsons, to extend by absentee vote).

This Order was adopted by the Zoning Commission at the public meeting on July 10, 1995 by a vote of 4-0: (Maybelle Taylor Bennett, William L. Ensign and Jerrily R. Kress to approve; John G. Parsons to approve by absentee vote).

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

SEP 1 1995

  
JERRILY R. KRESS  
Chairperson  
Zoning Commission

  
MADELIENE H. ROBINSON  
Director  
Office of Zoning

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