

# Government of the District of Columbia

## ZONING COMMISSION



Zoning Commission Order No. 496-D  
Case No. 85-19C  
(PUD and Map Amendment @ 1717 Rhode Island Avenue, N.W. -  
St. Matthews)  
November 10, 1997

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 from SP-1 to C-3-C for property located at 1717 Rhode Island Avenue, N.W.

The PUD site is comprised of Lot 89 (former lots 85, 803, 841 and 843) in Square 159; measures 51,053 square feet in land area; and is improved with the St. Matthew's 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, and was valid for two years, until January 16, 1989.

Subsection 2408.10 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.

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.

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.

By Z.C. Order No. 496-C, the Commission extended the validity of Z.C. Order Nos. 496, 496-A and 496-B for a period of two years; that is, until April 8, 1996, by which time application for a building permit must be filed and construction must begin no later than April 8, 1997. In making this determination, the Zoning Commission considered the applicant's motion for extension, the report of Advisory Neighborhood Commission 2B (ANC), other correspondence in opposition and the OP report. The Commission found the following as the basis for the extension:

1. Many of the developers of PUDs which were approved between 1985 and 1990 were seeking extensions of the original approval periods. Unfavorable economic market conditions were largely responsible for this occurrence, even though the previous unfavorable market conditions had begun to improve.
2. The applicant had remained committed to the completion of the project, having spent more than \$8 million in actual development of the project. Additionally, the applicant had provided significant up-front project amenities as required by Z.C. Order No. 496.
3. Pending litigation and delays in securing partial demolition and building permits resulted in the applicant being unable to commit to a construction schedule for a potential tenant, and encumbered the project's financing.

The Commission found that the PUD was approved prior to the enactment of the Dupont Circle Overlay District (DCOD) and was, 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 further found that its decision to extend the validity of the PUD is in the best interests of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations and Zoning Act.

On March 20, 1997, 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, 496-B and 496-C pursuant to Section 2408.10 of the Zoning Regulations, as amended by the text amendment related to "Good Cause" for

PUD time extensions, adopted by Z.C. Order No. 810. The motion also requested that the Zoning Commission address the remand in the Residential Action Coalition v. District of Columbia Zoning Commission ("Residential Action"), No. 95-AA-1121 (1995) and Hotel Tabard Inn v. District of Columbia Zoning Commission ("Tabard Inn"), 661 A.2d 150, 154 (D.C. 1995).

The motion noted that the sole criteria for determining whether a PUD should be extended is whether there is "good cause shown" (see 11 DCMR 2408.11).

The applicant's motion stated that the pendency of litigation challenging the last two orders of the Zoning Commission, Order Nos. 496-B and 496-C, serves as "good cause" for the Commission to extend the PUD.

The applicant's motion also stated that in addition to being a criteria for demonstrating good cause for a PUD time extension, pending litigation has substantially hampered the applicant's ability to obtain financing and to commit to a completion schedule for any potential tenants. The applicant noted that prospective lenders, builders and tenants will not rely on an appealed PUD Order until the Commission's decision is no longer subject to reversal.

The motion further stated that project opponents appealed the last two time extensions (496-B and 496-C) to the D.C. Court of Appeals. As noted above, the Court remanded the case to the Zoning Commission for further proceedings consistent with the Court's Tabard Inn decision. With regard to the Tabard Inn decision, the Zoning Commission has approved, in Order No. 810, a text amendment related to PUD time extensions. The "good cause" text amendment provides standards for determining good cause and for determining when a hearing is required. Pending litigation is a specific criteria which the Zoning Commission must consider in determining whether there is good cause for a time extension.

The applicant further stated that the pending litigation is sufficient in and of itself as to why the applicant has had difficulty obtaining a lead tenant. The pending litigation not only hampers the applicant's ability to commit to a construction schedule for a potential tenant, but also encumbers the project in terms of obtaining financing.

The applicant's motion also stated that Section 2408.10(b) of the "good cause" text amendment provides:

2408.10 The Zoning Commission may extend the periods set forth in Subsections 2408.8 and 2408.9 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; Provided, that the Zoning Commission determines that the following requirements are met:

\* \* \*

(b) There is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the Commission's justification for approving the original PUD; and. . .

There have been no changes impacting the PUD since Order No. 496-C was issued approving the third time extension. Order No. 496-C specifically evaluated whether there had been any substantial changes impacting the approved PUD and found that there had been none.

Finally, the applicant's motion discussed whether a hearing was required. Section 2408.12 provides:

The Zoning Commission shall hold a public hearing on a request for an extension of the validity of a planned unit development only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the planned unit development concerning any of the criteria set forth in Subsection 2408.11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.

The applicant stated that it met the criteria under Section 2408.11(c) ("pending litigation") as a demonstration of good cause. Thus, there was no need for a Section 2408.12 hearing to determine whether a material factual conflict exists with respect to the criteria of Section 2408.11.

Counsel for the Dupont Circle Citizens Association (DCCA) and the Residential Action Coalition (RAC), by letter dated March 31, 1997, opposed the time extension request. DCCA and RAC argue that (1) the subject PUD time extension request does not meet the "good cause" exception standards; (2) there is no pending litigation evidencing "good cause" for a time extension; and (3) there have been material factual changes to the Comprehensive Plan and Zoning Regulations which undermine the original PUD approval.

By report dated April 28, 1997, the Office of Planning (OP) recommended that the Commission extend the validity of the subject PUD and related map amendment for two additional years. As it had done in the past, the OP analyzed the effect of any subsequent amendments to the Zoning Regulations and the Map, and to the Comprehensive Plan since the PUD was approved. The OP report states:

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. In 1989, the Comprehensive Plan was amended. With that amendment, the Comprehensive Plan Generalized Land Use Map now depicts the site's use and density as 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 commercial 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.

In 1991, the Zoning Commission created the Dupont Circle Overlay District (DCOD), which includes the site of the proposed PUD. Because the proposed PUD was approved by the Commission prior to the enactment of the DCOD, the proposal can proceed as originally approved and would not be directly affected by the DCOD regulations. It should be noted that the Commission's approval of a two-year time extension in Order 496-B occurred in June 1993, long after the Comprehensive Plan designation and zoning (DCOD) were modified for the area which includes the 1717 Rhode Island Avenue PUD site. Based on the analysis above, the OP concluded that the Zoning Regulations and Map and Comprehensive Plan have not been changed for the subject site since the Zoning Commission extended the PUD and related map amendment in Order No. 496-C. The changes that had occurred prior to that time were reflected in that order.

No report was submitted by Advisory Neighborhood Commission (ANC) 2B.

On May 13, 1997, at its regular monthly meeting, the Zoning Commission considered the applicant's motion for extension of the validity of the PUD, the opposition of DCCA and RAC and the report of the OP. Based upon the text amendments related to "good cause" adopted by the Zoning Commission, the Commission finds:

1. Under Section 2408.11(c), the applicant has demonstrated good cause for a time extension based upon the existence of pending litigation or such other conditions, circumstance or facts beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order. The Commission finds that the specific provision of the Zoning Regulations is not limited solely to pending litigation, but encompasses other related actions beyond the applicant's control. DCCA and RAC argue that there is currently no pending litigation since the Court of Appeals has remanded Order Nos. 496-B and 496-C to the Commission for further proceedings consistent with the Court's

June 29, 1995 decision in Tabard Inn. DCCA and RAC do not address the significant fact that the Commission's order responding to the Court's remand only became final February 14, 1997. Because of the time involved in developing the "good cause" text amendments in response to the Court of Appeals' remand, the applicant is again faced with the need for a time extension. Under the current terms of Order No. 496-C, commencement of construction of the project was required by April 8, 1997. Until the Commission determines that the existing time extension orders comply with the regulations for PUD extensions, the applicant faces the same risks as with pending litigation.

2. Consistent with Order No. 496-C, the Commission finds that the applicant remains committed to the completion of the project, having already expended a large sum of money in actual development of the project. Additionally, the applicant has provided significant up-front amenities as required by Z.C. Order No. 496.
3. The Commission finds that there is no need for a further hearing. The OP report adequately addresses the effect of changes to the Comprehensive Plan, the Zoning Regulations and the Map. Further, the Commission notes that, in footnote 12 of Hotel Tabard Inn v. District of Columbia Zoning Commission ("Tabard Inn"), 661 A.2d 150, 155 (DC 1995), the Court stated that:

Petitioners also claim that the Zoning Commission failed to adequately consider the amended Comprehensive Plan, the Dupont Circle Overlay District regulations (DCOD) and the ANC's recommendations. However, in its order extending the validity of the PUD, the Zoning Commission adopted the report issued by the Office of Planning, which evaluated the existing PUD under the amended Comprehensive Plan and recommended the extension of the validity of the PUD. The Office of Planning found that the PUD was consistent with the amended Plan except that the PUD exceeded the amended Plan's maximum height requirement of 90 feet. The Office of Planning found that any changes in the DCOD regulations affected subsequent PUDs only, and thus had no effect on the Archdiocese's PUD. The Zoning Commission referred to the ANC's

objections and recommendations in its Order, but ultimately declined to follow the ANC's recommendations.

Consequently, we conclude that the Zoning Commission adequately considered the amended Comprehensive Plan, DCOD regulations, and ANC recommendations.

In light of the Court upholding the Commission's prior findings, the Commission will not revisit the changes to the Comprehensive Plan and the adoption of the DCOD.

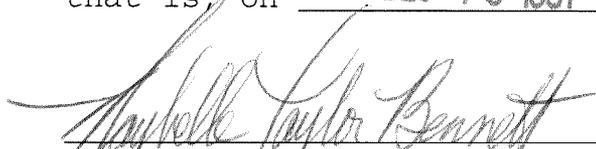
The Zoning Commission further believes that its decision to extend the validity of the PUD is in the best interests of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations and Zoning Act.

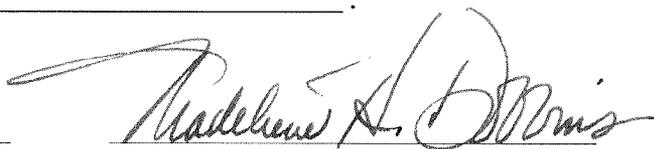
In consideration of the Commission's findings and the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS** that the validity of Z.C. Order Nos. 496, 496-A, 496-B and 496-C be **EXTENDED** for a period of two years; that is, until April 8, 1998, by which time application for a building permit must be filed. Subject to 11 DCMR 2408.8, construction must begin no later than April 8, 1999.

Vote of the Zoning Commission taken at the monthly meeting on May 13, 1997: 4-0 (John G. Parsons, Jerrily R. Kress, Maybelle Taylor Bennett and Herbert M. Franklin to extend the validity of Z.C. Order Nos. 496, 496A, 496B and 496D for a period of two years.

This order was adopted by the Zoning Commission at its public meeting held on November 10, 1997 by vote of 4-0 (John G. Parsons, Herbert M. Franklin and Maybelle Taylor Bennett to adopt, Jerrily R. Kress to adopt 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 DEC 19 1997.

  
MAYBELLE TAYLOR BENNETT  
Chairperson  
Zoning Commission

  
MADELIENE H. DOBBINS  
Director  
Office of Zoning

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