

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 528-C
Case No. 86-21F/85-9P
(PUD & Map @ Square 1661 - Miller/Xerox)
June 13, 1994

By Z.C. Order No. 528 dated April 13, 1987, the Zoning Commission for the District of Columbia granted the application of the Miller Companies for a planned unit development (PUD) and related map amendment, pursuant to Chapter 24 and Section 102 of the District of Columbia Municipal Regulations (DCMR). The map amendment was from R-5-B and C-2-B to R-5-C and C-3-B for lots 1, 14, 15, 26, 800, 804 and 808 in Square 1661. The PUD site is in the square bounded by Wisconsin and Western Avenues, Military Road, and Jenifer and 43rd Streets, N.W.

The final PUD was for the construction of a mixed-use development including residential, office and retail uses.

Z.C. Order No. 528 became final and effective on May 8, 1987. The validity of that order was for two years, that is, until May 8, 1989 provided that application for a building permit was filed within that period of time, after which construction would have to start by May 8, 1990. An application for a building permit was filed in March 1989.

Pursuant to 11 DCMR 2406.10 of the Zoning Regulations, the Commission may extend the validity of the PUD approval for good cause shown upon a request made before the expiration of the approval.

By Z.C. Order No. 528-A dated June 11, 1990, the Zoning Commission granted the applicant's request to extend the validity of Z.C. Order No. 528, for two years; that is, until May 8, 1991, provided that, application for a building permit was filed within that period of time, after which construction would have to start within three years; that is, by May 8, 1992.

By Z.C. Order No. 528-B, dated June 8, 1992, the Zoning Commission extended the validity of Z.C. Order Nos. 528 and 528-A for two years; that is until May 8, 1993, provided that application for a building permit was filed within that period of time, after which construction would have to start within three years; that is, by May 8, 1994.

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By letter dated March 10, 1994, counsel on behalf of the applicant, filed a request to extend the validity of the previously approved PUD for a period of two years.

The letter indicated that the basis for an extension of the validity of the PUD is as follows:

".... Given today's market conditions, Xerox has not been able to sell the property to a suitable developer. Efforts to date have included contacting other developers, brokers, potential users and tenants and receiving proposals from potential users and developers."

"Given Xerox's diligence in seeking a developer for the property, and the lack to date of a suitable developer of site, it is not possible that construction can begin prior to May 8, 1994. An additional two-year period is therefore requested before construction must begin for good cause shown herein."

By memorandum dated March 14, 1994, the District of Columbia Office of Zoning (OZ) referred this matter to the District of Columbia Office of Planning (OP) for an analysis of whether any amendments to the Zoning Regulations or Map or to the Comprehensive Plan, since the Zoning Commission decided the case, will affect this request.

By memorandum dated April 26, 1994, OP recommended that the applicant's request be granted. OP indicated the following:

"....the Office of Planning concludes that neither the Zoning Regulations and Map, nor the Comprehensive Plan, have changed since the Zoning Commission approved the subject PUD and map amendment. The site remains in R-5-C and C-3-B zone districts and in the mixed medium density commercial and medium density residential land use categories. Given the time necessary for the applicant to sell the property to a developer willing to undertake the approved PUD project, the Office of Planning recommends that the Zoning Commission grant this request for an additional two-year time extension to May 8, 1996 before which construction must commence.

By letter dated April 29, 1994, the Friendship Neighborhood Coalition (FNC) recommended conditional approval of the request. The FNC indicated that the Commission should request a pre-construction agreement between Xerox Credit Corporation or its successor in interest, FNC, and Advisory Neighborhood Commission

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(ANC) 3E to protect the neighborhood from construction and its attendant noise, vibration, litter and dirt.

By letter dated April 29, 1994, Counsel for the applicant responded to the FNC's April 29, 1994 letter. Counsel for the applicant indicated that he reviewed FNC's letter and agrees to a condition in the Commission's order requiring that the applicant or its successors enter into a formal agreement to address the issues with FNC and other community groups including ANC-3E prior to construction of the project.

By letter dated April 29, 1994, ANC-3E voted to conditionally support the two-year extension request, as outlined in the FNC letter.

On May 9, 1994 at its regular monthly meeting, the Zoning Commission considered the request from counsel for the applicant, the OP report, the April 29, 1994 letter from the FNC, the letter dated April 29, 1994 from counsel for the applicant in response to FNC, and a letter dated April 29, 1994 from ANC-3E.

In regard to the conditional support of ANC-3E and the FNC, the Commission determined that additional conditions of approval constitute a modification to the original order, and would require additional public hearings. The Director of the Office of Zoning informed the Commission that requests to extend PUDs should be considered based on the findings of fact that existed at the time of the original approval and not based on factors that may have changed since then. The Commission concurs.

The Commission determined that an extension of time, as requested by the applicant, is reasonable and would not adversely affect any party or person.

The Commission believes that its proposed action to grant the request is in the best interest of the District of Columbia is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act and is not inconsistent with the Comprehensive Plan or the National Capital, as amended.

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. 528, 528-A and 528-B be **EXTENDED** for a period of two years; that is, until **May 8, 1995**. Prior to the expiration of that time, the applicant shall file an application for a building permit, as specified in 11 DCMR 2406.8. Construction shall start within one year of that date; that is, not later than **May 8, 1996**.

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Vote of the Zoning Commission taken at the monthly meeting on May 9, 1994, by a vote of 5-0: (William B. Johnson, William L. Ensign, Jerrily R. Kress and Maybelle Taylor Bennett, to approve a two-year extension and John G. Parsons, to approve by absentee vote).

This order was adopted by the Zoning Commission at the June 13, 1994 public meeting by a vote of 5-0: (William B. Johnson, John G. Parsons, Maybelle Taylor Bennett and William L. Ensign to adopt as corrected; Jerrily R. Kress, to adopt by absentee vote).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on JUL 8 1994.


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


MADELIENE H. ROBINSON
Director
Office of Zoning

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