

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 528-D

Case No. 86-21F/85-9P

(PUD & Map @ 5333 Wisconsin Avenue, N.W. - Miller/Xerox)

June 10, 1996

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 2408.10 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 PUD approval. On three occasions prior to this approval, the Zoning Commission determined that the applicant had shown good cause for the extension of the validity of the PUD.

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 Z.C. Order No. 528-C, dated June 13, 1994, the Zoning Commission extended the validity of Z.C. Order Nos. 528, 528-A and 528-B for two years; that is until May 8, 1995, provided that application for a building permit was filed within that period of time, after which construction must commence within three years; that is, by May 8, 1996.

By letter dated December 19, 1995, 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 reasons for an extension of the validity of the PUD have remained essentially the same as those supporting the previous three extensions, and are summarized as follows:

- o The applicant in Zoning Commission Case No. 86-21F/85-9P was the Miller Companies. The property was purchased from the Miller Companies in February 1989 by the Friendship Heights D.C. Limited Partnership (Friendship). Friendship prepared plans and applied for a building permit in March 1989 and a building permit was issued on January 20, 1990 and was extended through July 12, 1992.
- o The Xerox Credit Corporation was a lender to Friendship and pursuant to action of the U.S. Bankruptcy Court of the District of Columbia, Xerox acquired the property in a foreclosure auction on June 25, 1991. Xerox is not a developer, and therefore must wait until a developer assumes the project.
- o Xerox has considered the best options for development of the project. Xerox has spent a considerable amount of time and effort to obtain and keep current all relevant plans and permits. Pursuant to Z.C. Order No. 528-B, Xerox was issued a new building permit on June 23, 1993.
- o Given today's market conditions, Xerox has been unable to sell the property to a suitable developer. There has been substantial interest in developing the property, and Xerox has signed a letter of intent with a potential developer. Efforts to date have included contacting other developers, brokers, potential users and tenants and receiving proposals from potential users and developers.
- o Xerox has assembled a team of consultants to assist in obtaining a prospective purchaser of the property. Since 1992, Xerox has actively pursued the prospects to purchase the property.

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By memorandum dated January 29, 1996, the Office of Zoning (OZ) referred this matter to the 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 March 20, 1996, OP recommended that the applicant's request be granted. OP indicated the following:

"....the Office of Planning concludes that the Zoning Regulations and Map have not changed for the PUD site since the Zoning Commission last dealt with this case in Order No. 528-C. As well, the Comprehensive Plan land use designation for the site remains unchanged. Accordingly, the Office of Planning recommends that the Zoning Commission extend the validity of the PUD for an additional two years, that is until May 8, 1998, for construction to commence."

By letter dated February 29, 1996, the Friendship Neighborhood Coalition (FNC) recommended conditional approval of the request. The FNC indicated that the Commission should incorporate specific protections for the neighborhood during the construction and post-construction phases of the development as conditions of approval of an extension of time for the PUD. FNC requests that the Commission condition its approval on the applicant reaching an agreement with the neighborhood on issues related to construction and its attendant noise, vibration, litter and dirt.

By letter dated March 29, 1996, counsel for the applicant responded to the FNC's February 29, 1996 letter. Counsel for the applicant indicated that the applicant agrees to a condition in the Commission's order requiring that the applicant or its successors enter into an agreement to address the issues with FNC and other community groups including ANC-3E prior to construction of the project.

By letter dated February 21, 1996, ANC-3G indicated its support for the two-year extension request.

By letter dated February 5, 1996, ANC-3E indicated its unanimous support for the two-year extension request.

By letter dated March 13, 1996, the Single Member District Representative for ANC-3E04 indicated support for the concerns of the neighbors in her areas and for the FNC request for conditional approval.

On April 8, 1996 at its regular monthly meeting, the Zoning Commission considered the request from counsel for the applicant,

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the OP report, the response from the FNC, the response from counsel for the applicant regarding FNC's concerns, responses from ANC-3E, ANC-3G, and the single member representative for ANC-3E04.

With regard to the conditional support of the FNC, the Commission determined that additional conditions of approval would constitute a modification to the original order, and would require a further public hearing.

The Director of the Office of Zoning informed the Commission that requests to extend PUDs are requests to extend what the Zoning Commission has previously approved, and that modifications to the previously approved orders are not appropriate as part of this process. The Director noted that the applicant and the neighborhood have the option of reaching an agreement separate from the Commission's proceeding. The Commission concurred with the Director of the Office of Zoning, and determined that the order issued in this case should note that option.

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 for the National Capital, as amended.

The Commission has accorded ANCs 3E and 3G the "great weight" to which they are entitled.

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, 528-B, and 528-C be **EXTENDED** for a period of two years; that is, until **May 8, 1997**. Prior to the expiration of that time, the applicant shall file an application for a building permit, as specified in 11 DCMR 2408.8. Construction shall start within one year of that date; that is, not later than **May 8, 1998**.

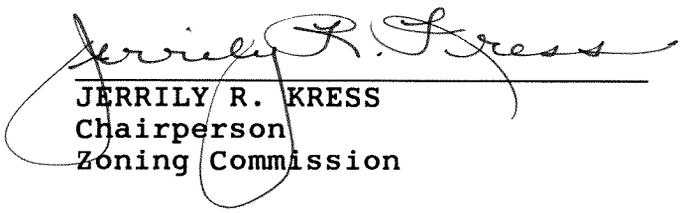
Vote of the Zoning Commission taken at the monthly meeting on April 8, 1996, by a vote of 5-0: (Herbert M. Franklin, John G. Parsons, Maybelle Taylor Bennett, Howard R. Croft to approve a two-year extension and Jerrily R. Kress, to approve by absentee vote).

This order was adopted by the Zoning Commission at the June 10, 1996 public meeting by a vote of 4-0: (Maybelle Taylor Bennett,

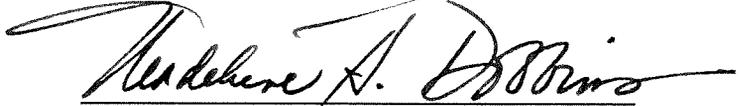
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John G. Parsons, Herbert M. Franklin and Jerrily R. Kress to adopt,
Howard R. Croft, not present, not voting).

In accordance with 11 DCMR 3028, this order is final and effective
upon publication in the D.C. Register; that is, on JUN 28 1996.



JERRILY R. KRESS
Chairperson
Zoning Commission



MADELIENE H. DOBBINS
Director
Office of Zoning

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