

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 538-C

Case No. 86-32C

(PUD @ 26th and L Streets, N.W.)

October 19, 1992

By Z.C. Order No. 538, dated July 23, 1987, the Zoning Commission for the District of Columbia approved the application of the 26th and L Limited Partnership for consolidated review and approval of a planned unit development (PUD) and change of zoning, pursuant to the provisions of Chapter 24 and Section 102 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning.

Z.C. Order No. 538 provided for the construction of a ten-story, 62-unit apartment building with limited commercial uses on the first and tenth floors and parking to accommodate 62 cars.

By Z.C. Order No. 538-A dated July 10, 1989, the Zoning Commission modified the previously approved PUD to provide for fewer and larger apartment units, design changes to the building entrance, a reduction in the number of floors, changes to the permitted commercial uses, and a 50 percent increase in parking spaces for cars.

By Z.C. Order No. 538-B dated December 11, 1989, the Zoning Commission established August 11, 1989 as the effective date for Z.C. Order No. 538-A.

Pursuant to DCMR 2406.10, the Zoning Commission has the authority to extend the validity of a PUD for good cause shown upon proper request of the application before the expiration of the PUD approval.

Pursuant to 11 DCMR 2406.8 and 2406.9, Z.C. Order No. 538-B will expire on August 11, 1992, provided the applicant filed for a building permit on or before August 11, 1991.

By letter dated and received on August 5, 1992, counsel for the new owner of the property, the Dominion Bank of Washington (Dominion) filed a motion, requesting that the Zoning Commission extend the validity of the PUD, originally approved in Z.C. Order No. 538 and subsequently modified and extended in Z.C. Order Nos. 538-A and 538-B, respectively. The letter indicated that the applicant filed for a building permit on November 14, 1989.

Z.C. ORDER NO. 538-C
CASE NO. 86-32C
PAGE NO. 2

The motion for extension of the orders stated the following rationale as the basis for the request:

1. The applicant in Zoning Commission Case No. 86-32C was 26th and L Limited Partnership. By Order No. 538, effective August 28, 1987, the Zoning Commission approved the apartment house PUD for the subject site. Thereafter, by Order No. 538-A, effective August 11, 1989, the Zoning Commission approved certain modifications to the PUD. By Order No. 538-B, dated December 22, 1989, the Zoning Commission clarified that the applicable dates for the filing of a building permit application and the commencement of construction shall run from August 11, 1989.
2. 26th and L Limited Partnership prepared detailed plans and applied for a building permit on November 14, 1989, prior to the deadline set forth in the PUD Orders. The permit application underwent reviews by several branches within the D.C. Department of Consumer and Regulatory Affairs (DCRA) over a four-month period. The permit application is still pending at DCRA, and it is not possible to complete the processing and commence construction by August 11, 1992.
3. Dominion was the lender to 26th & L Limited Partnership in connection with the acquisition of the property, which closed on May 2, 1988. Dominion acquired the property from 26th & L Limited Partnership in a foreclosure auction, and recorded a Trustee's Deed on the property on March 4, 1992 (Instrument No. 9200010723). It should be clearly noted by the Commission that Dominion is not a developer and has no ability to undertake such role. Therefore, the timing of the actual development of the property cannot be controlled by Dominion, but is controlled by the willingness and feasibility of other developers to assume the project and its obligations.
4. As detailed in the attached Affidavit of Douglas Carson (Exhibit D), since the time it assumed ownership of the property in the spring of 1992, Dominion has expeditiously attempted to determine the best way to proceed with the project. Dominion has spent a considerable amount of time and effort to obtain all relevant plans, documents and related information about the project and to evaluate this information.

Z.C. ORDER NO. 538-C
CASE NO. 86-32C
PAGE NO. 3

5. In addition, Dominion has also been developing a market strategy for ensuring the development of the property in a timely fashion. Given today's market conditions, and the fact that it has only had title to the property for a short time, Dominion has not been able to implement a suitable means for disposition of the asset. Efforts to date have included attempting to auction the property, contacting other developers and brokers, and receiving proposals from potential purchasers and developers. Options being evaluated include, but are not limited to, sale or land lease of the property, or a joint venture development.
6. Despite extensive advertising and promotion, Dominion did not receive any qualified bids for the property at the public auction held on July 10 of this year. In addition, Dominion has entertained numerous inquiries, but has obtained no legitimate offers to date. To bring the development at 26th and L to fruition, Dominion needs additional time to find an appropriate development entity that is willing to undertake the project.
7. Given the fact that Dominion recently gained ownership of the property, that a permit has not been issued for the project, and that Dominion has not found a suitable developer of the site, it is not possible that construction can begin prior to August 11, 1992. An additional three-year period is therefore requested before construction must begin. Dominion also requests a two-year extension to refile a building permit application if necessary.
8. Dominion believes that the proposed mixed-use project will make a worthwhile contribution to the city, and therefore requests that the approval be granted.

By a certificate of service attached to the motion for extension of time, the applicant indicated that copies of the motion were served on all parties in the case including Advisory Neighborhood Commission (ANC) 2A.

The Office of Zoning (OZ) by a memorandum dated August 12, 1992, referred the extension request to the District of Columbia Office of Planning (OP) for the analysis of the effects of the request on any amendments to the Zoning Map or Regulations, or to the Comprehensive Plan since the Zoning Commission initially decided the case.

Z.C. ORDER NO. 538-C
CASE NO. 86-32C
PAGE NO. 4

The OZ memorandum also indicated that a two-year extension of the PUD would be to August 11, 1993, with construction having to begin by August 11, 1994 instead of the dates that were proffered in the August 5, 1992 letter from counsel for the applicant.

By letters dated August 3, and 31, 1992, the Foggy Bottom Association and Advisory Neighborhood Commission (ANC) 2A urged the Commission not to grant the extension request. They contended that the District of Columbia Consumer and Regulatory Affairs (DCRA) notified the owners on April 18, 1992 that the application for review by the Technical Branch for building permit had been inactive for over one year and that no response has been provided to the DCRA. They also raised the issues of bulk, height, insufficient parking, poor amenity package, and that a change in ownership of the property should not influence the scope or intent of the PUD.

By a memorandum dated September 2, 1992, the OP stated that neither the Zoning Regulations and Map nor the Comprehensive Plan have changed since the Commission approved the subject PUD and map amendment. The OP also recommended that the Zoning Commission grant the present owner's request to extend the deadline for filing of a building permit application to August 11, 1994 and to extend the deadline for commencing construction to August 11, 1995.

At its public meeting on September 14, 1992, the Commission reviewed and considered the motion for extension of time, the OZ memorandum, the OP recommendation and the letters in opposition to the motion for extension.

Pursuant to 11 DCMR 2406.10 of the Zoning Regulations, the Commission believes that the applicant has shown good cause for the extension of time without further public hearing.

The Commission concurs with the applicant and OP and believes that a two-year extension of the validity of the PUD is appropriate. The Commission also concurs with the Office of Zoning about the duration and dates for extension and commencement of construction.

The Commission further believes that an extension of time, as requested by the applicant, is not unreasonable, that the rationale for granting approval for the PUD has not changed, and that no adverse consequences will result by approving the request.

Z.C. ORDER NO. 538-C
CASE NO. 86-32C
PAGE NO. 5

The Commission determined that an extension of time, as requested by the applicant, 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.

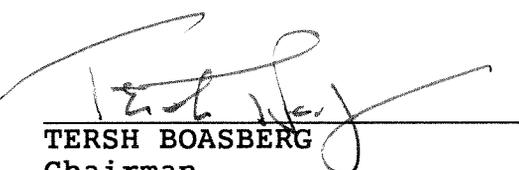
It is therefore ordered that the validity of Z.C. Order Nos. 538, 538-A and 538-B in Z.C. Case No. 86-32C be **EXTENDED** for a period of two years; that is until August 11, 1993. Because the applicant has complied with 11 DCMR 2406.8, construction must start not later than August 11, 1994.

Vote of the Commission taken at the monthly meeting on September 14, 1992: 5-0 (John G. Parsons, Maybelle Taylor Bennett, Tersh Boasberg, William L. Ensign and Lloyd D. Smith, to extend for two years).

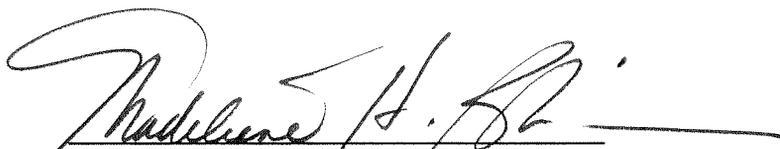
This order was adopted by the Zoning Commission at the public meeting on October 19, 1992 by a vote of 5-0 (Maybelle Taylor Bennett, Tersh Boasberg, William L. Ensign, John G. Parsons, and Lloyd D. Smith, to adopt as amended).

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

~~NOV 13 1992~~



TERSHER BOASBERG
Chairman
Zoning Commission



MADELIENE H. ROBINSON
Acting Director
Office of Zoning

zco538-C/LJP