

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 629-D

Case No. 88-16C

(PUD @ 901 New York Avenue, N.W.)

August 7, 1995

By Z.C. Order No. 629, dated September 11, 1989, the Zoning Commission for the District of Columbia approved an application of Jerome Golub Realty and the Willco Construction Company, pursuant to Chapter 24 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning.

The application was for consolidated review of a planned unit development (PUD) for lots 18-20, 23, 27-31, 804-806, 816-819, 821, 823, 827-831, 835-837, and 840-852 in Square 372 located at 901 New York Avenue, N.W.

The PUD approval was for the construction of a mixed-use commercial building, containing office and retail uses, to a height of 130 feet, a floor area ratio (FAR) of 9.5, and a lot occupancy of eighty-six (86) percent.

By Z.C. Order No. 629-A dated June 11, 1990, the Zoning Commission approved modifications to Condition No. 8 and 9 (b) of Z.C. Order No. 629. Condition No. 8 addresses the window mullions, the glass, the awnings and the granite; and Condition No. 9(b) addresses the fenestration.

By Z.C. Order No. 629-C, dated October 18, 1993, the Zoning Commission extended the validity of Z.C. Order Nos. 629, 629-A and 629-B for two years; that is, until October 13, 1995. Prior to the expiration of that time, the applicants shall file an application for a building permit; with construction to begin on or before October 13, 1995, pursuant to 11 DCMR 2406.8 and 2406.9.

By letter dated April 11, 1995, the counsel for the applicants filed a motion requesting the Commission to further extend the validity of Z.C. Order Nos. 629, 629-A, 629-B and 629-C for two years, that is, until October 13, 1997, pursuant to 11 DCMR 2406.10.

The bases for the instant motion are the same as in the previous extension requests. The instant motion summarizes the applicants basis for a two-year extension as follows:

A. Actions by Applicant Pursuant to PUD Approval

1. The applicants have already provided \$860,000 to the 919 L Street Tenants Association as part of the amenity package. The applicants' letter to the Commission verifying such payment, dated July 14, 1989, is in the record of this case as Exhibit 97. Such funds were provided upfront in the anticipation that the 901 New York Avenue PUD would proceed expeditiously. Given current market trends, as further detailed below, a time extension is necessary to continue to look for a lead tenant so that the upfront amenity funds are not lost.
2. In addition to providing the funds to the 919 L Street Tenants Association, the applicants committed, as part of their amenity package, to rehabilitate 149 units of D.C. owned property under the Homestead Program. Even though the applicants have not yet applied for a building permit for the PUD, they have begun the rehabilitation of the housing units. As noted in an affidavit of Richard S. Cohen, to date, 20 units have been completed and 13 more have been credited as completed, for a total of 33 units.
3. The cost of these renovations and the acquisition of 919 L Street, N.W. to date has exceeded \$1,640,000.
4. The applicants have entered into an agreement with the National Park Service and the National Park Foundation regarding Reservations 70 and 175. Under the Agreement, the applicants have agreed to construct improvements in Reservation No. 175. Further, in lieu of maintaining Reservations 70 and 175, the applicants have agreed to pay to the National Park Foundation \$50,000 as an endowment for the continued maintenance of those reservations.

B Market Conditions and Due Diligence

1. The applicants have not proceeded with construction since the PUD's approval solely because of unfavorable market conditions. These conditions have placed a halt on almost all new private construction projects in the past two years. The applicants have been unable to secure financing to allow the project to proceed without a lead tenant in place and the project substantially pre-leased. As the affidavit of Richard S. Cohen states, the applicants have been continuously marketing the project for a lead tenant since project approval.

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2. The applicants believe, and the amenities already provided confirm, that the proposed project will make a worthwhile contribution to the City, Advisory Neighborhood Commission (ANC) 2F (the project and the off-site amenity at 919 L Street were previously located in ANC 2C) and the development of the East End. The applicants, in good faith, have made substantial housing contributions in reliance upon the Zoning Commission's approval of this PUD. At the same time, the applicants have continuously marketed this project for a lead tenant.

The applicants, by an attachment to their letter, certified that Advisory Neighborhood Commission (ANC) 2F, Cooperative Association, Inc., and the Washington Inner City Self-Help, were served copies of the extension request.

By letter dated May 5, 1995, ANC-2F supported the applicants' request to extend the validity of the PUD. The letter indicated that the applicants have provided part of the PUD's amenity package.

The District of Columbia Office of Planning (OP), by memorandum dated May 31, 1995 indicated that the zoning of the site has changed from HR/C-3-C and C-3-C to DD/C-3-C since the PUD was approved, and that the PUD was approved before the enactment of the Downtown Development District (DDD) regulations. The promulgation of the DDD regulations were to help accomplish the land use and development policies of the Comprehensive Plan relating to various subareas of the downtown. The overall goals of the DDD regulations are to create a balanced mixture of uses -- retail, hotel, residential, entertainment, arts, and cultural; and to guide and regulate office development.

The OP memorandum further indicated that the Generalized Land Use Map of the Comprehensive Plan approved in 1985 includes the subject property in the mixed-use high density commercial/high density residential land use category. The Comprehensive Plan Amendments Act of 1989, which became effective on May 23, 1990, did not change the land use classification of the site, nor did Council Resolution 9-275, dated July 7, 1992, which "corrected" the Generalized Land Use Map. Overall, the classification has not changed since the Zoning Commission approved this application.

The OP added that the subject PUD would comply with the overall intent and purpose of the DD District because of the proposed mix of office, residential and retail uses, and that given the time required for the applicants to secure financing and a major tenant for the project, the Office of Planning recommended that the Zoning Commission grant the applicants' request to extend the deadline for

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the filing of an application for a building permit to October 13, 1997, and to extend the deadline for commencing construction to October 13, 1998.

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

On June 12, 1995 at its regular monthly meeting, the Zoning Commission considered the applicants' request for a two-year extension of the validity of Z.C. Order Nos. 629, 629-A, 629-B, and 629-C and concurred with the recommendation and position of OP and ANC-2F, that the extension be granted.

The Commission determined that the reasons advanced by the applicants for the extension request constitute good cause and that the request was filed timely, pursuant to Section 2406.10 of the Zoning Regulations. The applicants have demonstrated their willingness to go forward with the development of the project as soon as market conditions improve, and have provided substantial upfront amenities associated with the project.

The Commission determined that an extension of the validity of the PUD 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 Zoning Act, and is not inconsistent with the Comprehensive Plan for 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. 629, 629-A, 629-B and 629-C be **EXTENDED** for a period of **TWO YEARS**; that is, until October 13, 1997. Prior to the expiration of that time, the applicants shall file an application for a building permit, as specified in 11 DCMR 2406.8 and construction to start on or before October 13, 1998.

Vote of the Commission taken at the monthly meeting on June 12, 1995 4-0: (Maybelle Taylor Bennett, John G. Parsons and Jerrily R. Kress, to extend for **TWO YEARS**, William L. Ensign to extend by absentee vote).

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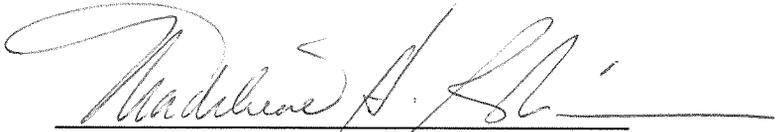
This order was adopted by the Zoning Commission at its public meeting of August 7, 1995, by a vote of 4-0: (John G. Parsons, William L. Ensign, and Maybelle Taylor Bennett, to adopt, Jerrily R. Kress, to adopt by absentee vote).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the District of Columbia Register; that is, on

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JERRILY R. KRESS
Chairperson
Zoning Commission



MADELIENE H. ROBINSON
Director
Office of Zoning

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Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 629-E
CASE NO. 88-16C
(PUD @ 901 New York Avenue, N.W. – Golub/Willco)

January 12, 1998

By Z.C. Order No. 629, dated September 11, 1989, the Zoning Commission for the district of Columbia approved the application of Jerome Golub Realty and the Willco Construction Company, pursuant to Chapter 24 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning.

The application was for consolidated review of a planned unit development (PUD) for lots 18-20, 23, 27-31, 804-806, 816-819, 821, 823, 827-831, 835-837, and 840-852 in Square 372 located at 901 New York Avenue, N.W.

The PUD approval was for the construction of a mixed-use commercial building, containing office and retail uses, to a height of 130 feet, a floor area ratio (FAR) of 9.5, and a lot occupancy of 86 percent.

By Z.C. Order No. 629-A, dated June 11, 1990, the Zoning Commission approved modifications to Condition No. 8 and 9(b) of Z.C. Order No. 629. Condition No. 8 addressed the window mullions, the glass, the awnings and the granite; and Condition No. 9(b) addressed the fenestration.

By Z.C. Order No. 629-B, dated May 13, 1991, the Zoning Commission extended the validity of Z.C. Order Nos. 629 and 629-A for two years, until October 13, 1993.

By Z.C. Order No. 629-C, dated October 18, 1993, the Zoning Commission extended the validity of Z.C. Order Nos. 629, 629-A and 629-B for two years, until October 13, 1995.

By Z.C. Order No. 629-D, dated August 7, 1995, the Zoning Commission extended the validity of Z.C. Order Nos. 629, 629-A, 629-B and 629-C for two years; that is, until October 13, 1997. Prior to the expiration of that time, the applicants were required to file an application for a building permit; with construction to begin on or before October 13, 1998.

By letter dated August 6, 1997, counsel for the applicants filed a motion requesting the Commission to further extend the validity of Z.C. Order Nos. 629, 629-A, 629-B, 629-C and 629-D for ten years, until October 13, 2007, pursuant to 11 DCMR 2408.10.

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). In its Order No. 810, the Zoning Commission adopted as final "good cause" text amendments for PUD time extensions.

Paragraph 2408.11(a) of the regulations specifically provides that an inability to obtain sufficient project financing, coupled with an applicant's good faith efforts to obtain such financing, is a criterion for establishing good cause for a time extension.

In terms of Section 2408.11(a), the Commission specifically found, in Order No. 629-D, that the applicants had not proceed with construction (or filing for a building permit) since the PUD's approval "... solely because of unfavorable market conditions. These conditions have placed a halt on almost all new speculative private construction projects in the District of Columbia during the past several years. The applicants have been unable to secure financing to allow the project to proceed without a lead tenant in place and the project substantially pre-leased."

The affidavit of William C. Smith, Senior Vice President of H/P Companies L.C., and the supporting documentation from the applicant details diligent marketing of the project for office and hotel uses, and other potential uses. Since the Zoning Commission's time extension approval in 1995, the applicant has demonstrated diligent efforts to market the project. The applicant provided documentation showing it has spent considerable time and expense marketing the property, but has been unsuccessful in its efforts so far. Documentation of efforts shows contacts with numerous hotel users, office users, the Washington Opera and potential purchasers.

While not specifically criteria under Section 2408.11, the Zoning Commission, in Order No. 629-D, found:

1. The applicants have already provided \$860,000 to the 919 L Street Tenants Association as part of the amenity package. The applicants' letter to the Commission verifying such payment, dated July 14, 1989, is in the record of this case as Exhibit 97. Such funds were provided up-front in the anticipation that the 901 New York Avenue PUD would proceed expeditiously. Given current market trends, as further detailed below, a time extension is necessary to continue to look for a lead tenant so that the up-front amenity funds are not lost.
2. In addition to providing the funds to the 919 L Street Tenants Association, the applicants committed, as part of their amenity package, to rehabilitate 149 units of D.C.-owned property under the Homestead Program. Even though the applicants have not yet applied for a building permit for the PUD, they have begun the rehabilitation of the housing units. As noted in the affidavit of Richard S. Cohen, to date, 20 units have been completed, and 13 more have been credited as completed, for a total of 33 units.

3. The cost of these renovations and the acquisition of 919 L Street, N.W. to date have exceeded \$1,640,000.
4. The applicants have entered into an agreement with the National Park Service and the National Park Foundation regarding Reservations 70 and 175. Under the Agreement, the applicants have agreed to construct improvements in Reservation No. 175. Further, in lieu of maintaining Reservations 70 and 175, the applicants have agreed to pay to the National Park Foundation \$50,000 as an endowment for the continued maintenance of those reservations.

The applicants' motion also discussed Paragraph 2408.10(b) of the Regulations. Paragraph 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

The applicants' motion stated that there have been no changes impacting the PUD since Order No. 629-D was issued approving the third time extension.

The applicants' motion stated that no hearing is necessary regarding this time extension request. Subsection 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 motion states that the applicants meet the criteria under Paragraph 2408.11(a) as a demonstration of good cause. Thus, there is no need for a Subsection 2408.12 hearing to determine whether a material factual conflict exists with respect to the criteria of Subsection 2408.11.

By letter dated October 9, 1997, Advisory Neighborhood Commission (ANC) 2F supported the applicants' request to extend the validity of the PUD for a ten-year period. The letter indicated that the applicants had provided some of the amenities required by the PUD.

The District of Columbia Office of Planning (OP), by memorandum dated October 16, 1997, indicated that the zoning of the site had changed from HR/C-3-C and C-3-C to DD/C-3-C since the PUD was approved, and that the PUD was approved before the enactment of the Downtown Development District (DDD) regulations. The DDD regulations were enacted to help accomplish the land use and development policies of the Comprehensive Plan relating to various subareas of Downtown. The overall goal of these regulations is to create a balanced mixture of uses by means of incentives and requirements for critically important land uses identified in the Plan and to guide and regulate office development. The subject PUD would comply with the overall intent and purpose of the DD District.

The OP memorandum further indicated that the Generalized Land Use Map of the Comprehensive Plan approved in 1985 designated the subject property as mixed-use high-density commercial/high-density residential. The Comprehensive Plan Amendments Act of 1989, which became effective on May 23, 1990, did not change the land use classification of the site, nor did Council Resolution 9-275, dated July 7, 1992, which "corrected" the Generalized Land Use Map. In addition, the classification was not changed by the Comprehensive Plan Amendments Act of 1994, effective October 6, 1994.

The OP noted that the applicant had expended approximately \$1.64 million toward the off-site amenities as required for the project, including funds for the acquisition of 919 L Street, N.W. (apartment building) by the tenants association and the rehabilitation of 33 of a total of 149 D.C.-owned units under the Homeloan Program. These up-front, good faith investments were made with the expectation that the project would proceed quickly.

Pursuant to Subsection 2408.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request being made before the expiration of the approval.

On October 23, 1997, at its regular monthly meeting, the Zoning Commission considered the applicants' request for a ten-year extension of the validity of Z.C. Order Nos. 629, 629-A, 629-B, 629-C and 629-D and concurred with the recommendation and position of OP and ANC-2F, that an extension should be granted. The Commission granted the extension for two years rather than the requested ten years.

The Commission determined that the reasons advanced by the applicants for the extension request constitute good cause and that the request was filed timely, pursuant to Subsection 2408.10 of the Zoning Regulations. The Commission determined that the applicant had demonstrated its willingness to go forward with the development of the project as soon as market conditions improve, and had provided substantial up-front amenities associated with the project.

The Commission determined that an extension of the validity of the PUD is reasonable and will not adversely affect any party or person. The Commission, however, believes that, because of the location of the PUD, immediately adjacent to both the proposed new convention center and the existing convention center, a two-year, rather than a ten-year, time extension is appropriate.

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 Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital, as amended.

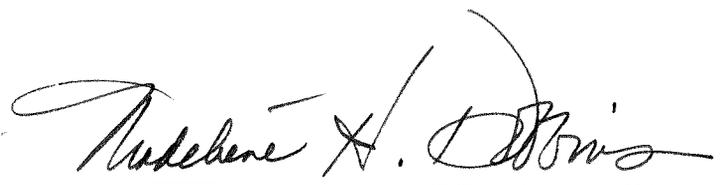
In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS** that the request to extend the validity of Z.C. Order Nos. 629, 629-A, 629-B and 629-C be **APPROVED** for a period of **TWO YEARS**, until October 13, 1999. Prior to the expiration of that time, the applicants shall file an application for a building permit, as specified in 11 DCMR 2408.8, and construction shall begin on or before October 13, 2000.

Vote of the Commission taken at the monthly meeting on October 23, 1997: 3-0 (John G. Parsons, Herbert M. Franklin and Maybelle Taylor Bennett to extend for two years; Jerrily R. Kress, not present, not voting).

This order was adopted by the Zoning Commission at its public meeting of January 12, 1998, by a vote of 3-0: (John G. Parsons, Herbert M. Franklin and Maybelle Taylor Bennett to adopt; Jerrily R. Kress, not voting, not having participated).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the District of Columbia Register; that is, on JAN 30 1998.


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


MADELIENE H. DOBBINS
Director
Office of Zoning