

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 629-F
CASE NO. 88-16C
PUD @ 901 New York Avenue, N.W. -
(Peterson/Monument Realty)

May 10, 1999

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 March 12, 1999, 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, 629-D and 629-E for two years until October 13, 2001, pursuant to 11 DCMR 2408.10.

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.

The Applicant's rationale for the requested PUD time extension states that poor market conditions have had a negative impact on the progress of this PUD. In terms of ¶2408.11(a), the Commission found, in Orders No. 629-D and 629-E, that the Applicant had not proceeded 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 Applicant has been unable to secure financing to allow the project to proceed without a lead tenant in place and the project substantially pre-leased."

In Order No. 629-E, the Commission also specifically found that the Applicant had 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 and potential purchasers.

Since the issuance of Order No. 629-E in October, 1997, the Applicant has continued its efforts to develop the subject property. Such efforts are described in the affidavit of William C. Smith, Senior Vice President of The Peterson Companies. These efforts resulted in the Applicant entering into a purchase agreement with a predecessor in interest to Monument, for the sale of the property. The original closing date for this sale was scheduled to be March 1, 1999. Due to the complicated nature of the approvals needed to develop this property, the need to study alternative uses, the state of the leasing and user market as well as the difficulties in obtaining financing, the closing date was extended until May 5, 1999.

Since the property has been under contract, Monument has been performing and continues to perform a feasibility study, evaluating a wide range of uses for the subject property. The potential uses being examined have included: (1) an updated office building use taking into account changes in the office building market since the PUD was originally approved in 1989, (2) a 1400 room hotel, which would have combined the property at 1000 K Street, N.W. with the subject site, and (3) a stand-alone hotel of 900 to 1,000 rooms on the subject site. Due to various complexities involved in the 1,400 room hotel option, this last alternative is not feasible.

However, both the updated office alternative and the stand-alone 900 to 1000 room hotel are still being vigorously evaluated.

The final sale of the property, even if completed by the anticipated May 5, 1999 closing date, will not afford sufficient time for Monument to proceed with the preparation of working drawings and the acquisition of a building permit. Once Monument owns the property, it intends to continue its analysis of the PUD either proceeding with the option of developing a hotel on the subject property or continuing the approved office use while further pursuing the rezoning the subject property to a C-4 Zone District consistent with the recently amended Comprehensive Plan.

The Zoning Commission believes that it is in the best interest of the District to continue the PUD approval for an additional two-year period. Given the excellent real estate climate, the contract purchaser is more likely than ever to secure a lead tenant necessary for the approved PUD project or to secure the hotel entity necessary to move forward with a modified PUD project. The District's interests would be best served by encouraging development of the site to replace the existing parking lot. Extending the PUD will put the subject site in the best position to be redeveloped.

Significant amenities related to this PUD have been provided. These include: \$860,000 to the 919 L Street Tenants Association, the rehabilitation of housing units under the Homestead Program, endowments to the National Park Foundation and improvements on Reservation 175. The amenities provided represent a total expenditure of \$1.64 million. In anticipation of the ultimate development of the Subject Property, Monument has entered into an agreement with Advisory Neighborhood Commission (ANC) 2F, the Logan Circle Community Association and the Blagden Alley Association to provide \$1,500,000 of market rate housing within the boundaries of ANC 2F.

While not one of the criteria specifically set out under §2408.11 as evidencing good cause, the provision of these amenities up-front evidences the good faith efforts, present from the very beginning, to follow through with this PUD.

Paragraph 2408.10(b) of the Zoning Regulations provides that:

§2408.10 The Zoning Commission may extend the periods set forth in §§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:

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;

Order No. 629-E evaluated whether there had been any substantial change impacting the PUD since its approval and found that there had been none. Order No. 629-E provided:

The District of Columbia Office of Planning (OP), by memorandum dated October 16, 1997, indicated that the zoning of the site was changed from HR/C-3-C and C-3-C to DD/C-3-C since the PUD 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 the downtown. The overall goal of the DDD regulations is to create a balanced mixture of 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 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. In addition, the classification was not changed by the Comprehensive Plan Amendments Act of 1994 Effective October 6, 1994.

Furthermore, since Order No. 629-E was issued approving the fourth time extension, the Comprehensive Plan has been amended to add to the Zoning Commission's basis for its approval of the PUD. Pursuant to the Comprehensive Plan Act of 1998, the subject site was changed from mixed use high density commercial/high density residential to high density commercial. Such a land use classification makes the approved PUD even more well-suited to its broader geographic area.

Moreover, the pending Comprehensive Plan states that it is appropriate to grant additional PUD extensions if significant amenities have been provided such as in this case.

The Office of Planning (OP) by memorandum dated April 5, 1999, recommended that the Applicant's request for an extension of the PUD be granted. The OP report further stated that:

The enactment of the DD District regulations did not change the underlying zoning of the site, and the Office of Planning believes that the PUD, if developed as either an office building or a hotel, will not be inconsistent with the DD District Regulations. During deliberations on the DD District regulations, the Zoning Commission was cognizant that the subject PUD was located within the area boundaries of the proposed DD District and, accordingly, took this into consideration. Furthermore, the Commission has approved previous time extensions in this case notwithstanding the DD District regulations then in place because the goals of the DD District regulations and the subject PUD are similar.

The Generalized Land Use Map of the Comprehensive Plan of the District of Columbia, most recently amended in 1994, designates the site for high-density commercial/high-density residential land uses. However, pursuant to the Comprehensive Plan Amendment Act of 1998, which is expected to become final by mid-April, 1999, the designation of the subject site will be changed from mixed-use high density commercial/high density residential to high density commercial. Such a change in land use designation does not conflict with the PUD, and in fact, serves to make the PUD and its potential commercial components even more compatible with the Comprehensive Plan.

By letter dated February 15, 1999, Advisory Neighborhood Commission (ANC) 2F supported the Applicants' request to extend the validity of the PUD for a two year period.

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 April 12, 1999, 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, 629-C, 629-D and 629-E 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.

The Commission determined that the reasons advanced by the Applicant 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 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, through 629-E, be APPROVED for a period of TWO YEARS, until October 13, 2001. 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, 2002.

Vote of the Commission taken at the monthly meeting on April 12, 1999: 4-0 (John G. Parsons, Herbert M. Franklin, Jerrily R. Kress and Anthony Hood to adopt; Angel Clarens, not voting, not having participated in the case).

This order was adopted by the Zoning Commission at its public meeting of May 10, 1999, by a vote of 5-0: (Angel F. Clarens, Herbert M. Franklin, Jerrily R. Kress, Anthony J. Hood, to adopt, and John G. Parsons, 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 JUL 30 1999.


ANGEL F. CLARENS
Chairman
Zoning Commission