

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 700-F (REVISED)
Case No. 01-05TE/00-08TE/90-20F/87-4P
(Capitol Point PUD Extension)
June 10, 2002

By Zoning Commission Order Nos. 623 and 623-A, dated July 6, 1989, the Zoning Commission granted Riverside Associates Limited Partnership ("Riverside" or "applicant") first-stage approval of a planned unit development ("PUD") and related map amendment from unzoned to W-1 and W-3 for Lot 801 in Square 602 ("site"), located adjacent to the east boundary of Fort McNair, at 2nd and R Streets, S.W.

By Zoning Commission Order No. 700, dated February 10, 1992, the Zoning Commission for the District of Columbia granted the application of Riverside for a second-stage approval of the PUD and related map amendment from W-1 and W-3 to CR for the site. The second-stage PUD was designed as a high-rise development, to include both residential and commercial uses.

On March 27, 2001, Riverside filed a request for a time extension for its final PUD. The Commission previously extended the final PUD in question three times, the last time being on June 12, 2000 (ZC. Order No. 700-E). The extensions were granted for good cause due to the "applicant's adverse economic conditions coupled with the applicant's efforts to market the PUD," as well as pending litigation and a resulting difficulty in obtaining financing (*See* Z.C. Order No. 700-D, p. 2).

At the Commission's May 13, 2002, regular monthly meeting, the Commission and the Office of Planning identified a number of design concerns with the final PUD as it was originally approved in 1994 and deferred a decision on the applicant's request for an extension of the second-stage approval.

At its June 10, 2002, regular monthly meeting, the Commission granted an extension of the first-stage of the applicant's PUD only, while denying the request for the extension of the second-stage of the PUD.

A PUD may be extended if the Commission determines that "[t]here is no substantial change in any of the material facts upon which the Commission based its original PUD approval that would undermine the Commission's justification for approving the original PUD" (*See* 11 DCMR § 2408.10).

The Commission finds that the area surrounding the site has experienced substantial-change since the final PUD was first approved. Most notably, the Commission's long-standing proceeding to rezone the Capitol Gateway area is nearing completion. The Commission's principal focus has been to create a more livable, street-oriented residential area in and around the subject property. In addition, the Anacostia Waterfront Initiative, a public-private partnership, recently unveiled a set of recommendations designed to revitalize the entire Anacostia River waterfront area. Included in those recommendations are plans for reinvigorated mixed-use development in the Capitol Gateway area.

The quality and design of any development on the project site, being situated in the center of Capitol Point, is an important component for the success of both of these efforts. Among the Commission's concerns is the fact that the project itself largely faces inwards, thereby isolating itself physically and aesthetically from its surroundings. Therefore, the final PUD is no longer in keeping with the Commission's vision for the area.

Due to these changed circumstances, the Commission finds that the material facts that formed the basis of the second stage PUD approval have changed to such an extent that the Commission's original justification for approving the PUD is undermined. It follows that the Commission cannot grant the request for a full PUD extension at this point in time, pursuant to 11 DCMR § 2408.10.

However, no such substantial change in circumstances has occurred with respect to the first-stage of the PUD. The general approval granted was not impacted by the planning and zoning changes for the area. Pursuant to 11 DCMR § 2407.10, the Commission is authorized to extend the validity of a first-stage PUD in its discretion. Because the litigation regarding contamination of the site concluded only recently, the Commission finds that the extension is warranted. The Commission's approval will extend for one year, to allow the applicant another opportunity to file a stage-two PUD application. This is consistent with the time frame that normally follows the approval of the first-stage of a PUD (*See* 11 DCMR § 2407.10).

Preserving the first-stage of a PUD, while denying the second-stage, is supported by case law. Even though approval of the second-stage PUD incorporates that which was approved in the first-stage, approval of a first-stage PUD has been found by the District of Columbia Court of Appeals to remain reviewable under the District of Columbia Administrative Procedures Act even after approval of the second-stage. (*See Friendship Neighborhood Coalition v. District of Columbia Zoning Commission*, 516 A.2d 532 (D.C. 1986) (petition for review of first-stage of PUD held in abeyance pending conclusion of Commission's review of second-stage of the PUD), citing *Dupont Circle Citizens Association v. District of Columbia Zoning Commission*, 426 A.2d 327, 331 (D.C. 1981) (Commission's decision to approve or deny first-stage PUD application is appealable under the APA). Therefore, approval of a first-stage PUD can be seen to stand alone as an independent final action by the Commission.)

Furthermore, this bifurcated approach is akin to the practice outlined in 11 DCMR § 2407.12. That section, applicable to a consolidated PUD review, allows for the Commission simultaneously to approve the first-stage of a PUD but to deny the second-stage.

The PUD-related map amendment from W-1 and W-3 to CR, although originally part of the second-stage PUD approval, will also be preserved by this order. Ordinarily, a map amendment in connection with a PUD is a part of the first-stage approval. See 11 DCMR § 2406.11. Therefore, the approval of the map amendment may be attributed to the first stage and remain as a part of the first-stage PUD approval.

In consideration of the reasons set forth in the order, the Zoning Commission for the District of Columbia hereby **ORDERS** that the validity of Z.C. Orders 623 and 623-A be extended for a period of **two years**, that is, until June 10, **2004**, for the applicant to file a second-stage PUD application.

The Commission on June 10, 2002, voted to **DENY** the application, in part, and to **APPROVE**, in part, on a vote of **5-0-0** (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Peter G. May, and James H. Hannaham in favor).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on June 10, 2002, by a vote of **5-0-0** (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Peter G. May, and James H. Hannaham in favor).

In accordance with the provision of 11 DCMR 3028, this Order shall become final and effective upon publication in the *D.C. Register*, that is on 2002 2 3 2002



Carol J. Mitten
Chairperson,
Zoning Commission



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