

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 910-A
Case No. 98-17F/01-31TE
(Second-Stage Planned Unit Development and Map Amendment
at 100 Potomac Avenue, S.E. – Florida Rock Properties, Inc.)
May 13, 2002

This Decision and Order arises out of a motion by Florida Rock Properties, Inc. (“applicant”) for an extension to the validity of the planned unit development (“PUD”) approved in Zoning Commission Order No. 910 pursuant to chapter 24 of the Zoning Regulations. At its public meeting on May 13, 2002, the Commission took action to deny the requested extension.

Procedural History

On November 9, 2001, the applicant filed a motion to extend the validity of the order approving the PUD by two years. Pursuant to Z.C. Order No. 910, the validity of the PUD approval would otherwise expire November 26, 2001. In an effort to show good cause for the extension, as required by 11 DCMR § 2408.10, the applicant asserted that construction of buildings has not yet occurred on the PUD site despite diligent and good faith efforts on the part of the applicant.

The Office of Planning (“OP”) recommended approval of the request for a two-year extension to give the applicant time to find a tenant for the project, to modify the project design to meet the needs of the tenant, and to address OP’s concerns regarding the approved PUD. The OP report indicated that, following extensive discussions between the applicant and OP, the applicant agreed not to build the PUD as currently designed but to seek the Commission’s approval of a PUD modification, if the Commission first granted the motion for an extension of time.

A letter was received from Ward 6 Councilmember Sharon Ambrose urging the Commission to grant the requested extension in light of the applicant’s continuing commitment to the development and the time and interest invested in the project by many parties during the Commission’s consideration of the second stage of the PUD.

Findings of Fact

1. The applicant is the owner of the PUD site, located at 100 Potomac Avenue, S.E. (Square 707, Lots 800-802; Square 708, Lot 806; and Square 708E, Lots 807-808). A related amenity site is located nearby on Square 664E.

2. A second-stage PUD and associated map amendment, from M to C-3-C, were approved by the Commission by Z.C. Order No. 910. The order became effective November 26, 1999, and was valid for two years after the effective date.
3. The PUD site, which is currently operated as a gravel yard, is located adjacent to the Frederick Douglass Bridge (also known as the South Capitol Street Bridge), contains approximately 253,502 square feet of land area and has more than 800 linear feet of frontage on the Anacostia River. The approved PUD permits approximately 1.5 million square feet of prospective commercial development.
4. The applicant stated that the project has not proceeded, despite its diligent and good faith efforts, primarily because the applicant was not selected as a finalist in the process to select a site for a new headquarters facility for the U.S. Department of Transportation. In light of the need for a new marketing strategy to identify one or more large users for the PUD, and to locate financing for the project based on the change in marketing strategy, the applicant has been unable to prepare the appropriate documents required to file an application for a building permit or to obtain the necessary financing commitments to permit the commencement of construction of the project. The applicant noted that its money and effort have been committed to accomplish some of the tasks described in Z.C. Order No. 910, especially with respect to construction of a bulkhead along the Anacostia River waterfront portion of the PUD site and preparation of covenants pertaining to the PUD site and to the amenity site. The applicant states that these factors constitute good cause for an extension of time to construct the approved PUD.
5. The applicant asserts that there have been no substantive changes since the PUD was approved that would undermine the Commission's original approval pursuant to 11 DCMR § 2408.10(b).
6. The Commission credits OP's conclusion that there have been changes to the material facts upon which the Commission based its decision to approve the PUD, including that:
 - (a) DOT, which had been a target tenant for the PUD project, has selected a different headquarters site, and thus the PUD design would likely need to be changed to accommodate a number of smaller tenants;
 - (b) The Anacostia Waterfront Initiative, currently underway, has raised awareness of the potential for a mix of commercial, recreational, and residential uses in near Southeast and along the Anacostia River waterfront;
 - (c) The market for private housing in central Washington and on Capitol Hill has improved dramatically;
 - (d) NAVSEA has moved approximately 5,000 employees into the Washington Navy Yard;

- (e) Four new office buildings have been constructed along M Street to accommodate contractors associated with NAVSEA;
 - (f) Funding has been approved for the expansion of the Marine Barracks and the extensive Arthur Capper HOPE VI housing development, thereby removing a serious obstacle to market-rate housing development on the PUD site;
 - (g) The Board of Zoning Adjustment has approved construction of a mixed-use building at New Jersey Avenue and L Street, S.E. that is slated to include 400 apartments and 200 hotel rooms;
 - (h) The Earth Conservation Corps – one of the intended beneficiaries of the approved PUD – now has two facilities in the vicinity of the proposed third facility on the amenity site; and
 - (i) Recent federal legislation allows private-market participation in the development of the nearby Southeast Federal Center site with a mix of residential and office uses, and the General Services Administration is currently seeking private-sector development consulting services in furtherance of that goal.
7. The Comprehensive Plan Generalized Land Use Map calls for a mix of medium-high density commercial, high-density residential, and production and employment use for the PUD site. The Commission is presently considering the final proposals in Case No. 96-3/89-1 to establish an overlay zone in the Buzzard Point-Capitol Gateway area. If adopted, the underlying zoning of both the PUD site and the amenity site would change from M to BP/W-2. The overlay would alter the matter-of-right development allowed on the PUD site, including requiring a setback of 75 feet along the waterfront, and allowing review of projects along the waterfront, with proposed projects becoming subject to design-related standards.

Conclusions of Law

The applicant is seeking to extend the validity of a planned unit development approved by the Commission in 1999. Generally, a PUD approved by the Commission is valid for two years, during which time an application must be filed for a building permit. 11 DCMR § 2408.8. The Commission may elect to extend that deadline, if there is no substantial change in any material fact upon which the Commission based its original approval of the PUD that would undermine its justification for approving the original PUD, and if the applicant demonstrates with substantial evidence that there is good cause for an extension. 11 DCMR § 2408.10. In order to show good cause, an applicant must demonstrate, with substantial evidence, that certain criteria exist, including an inability to obtain sufficient project financing for the PUD, following an applicant's diligent, good faith efforts to obtain financing, because of changes in economic and market conditions beyond the applicant's reasonable control. 11 DCMR § 2408.11(a).

Notwithstanding an applicant's satisfaction of the applicable criteria for a showing of good cause, the Zoning Regulations do not compel the Commission to grant an extension. Rather, 11 DCMR § 2408.10 provides that the Commission "may extend the periods" (emphasis added) specified in §§ 2408.8 and 2408.9 to apply for a building permit and start construction, respectively. Even if an applicant can demonstrate good cause pursuant to 11 DCMR § 2408.11, other factors may warrant denial of a requested extension based solely upon the Commission's exercise of its discretion. The Commission concludes that there is no need to discuss whether the applicant has demonstrated good cause for an extension because, in this case, the applicant's construction of the approved PUD, as designed, would be inconsistent with the "orderly development of the District of Columbia" in light of substantial changes that have occurred in the material facts since the original approval of the PUD. D.C. Official Code § 6-641.01.

The applicant states that no application has yet been filed for a building permit primarily because the PUD was not selected as the site for DOT headquarters. The loss of a very large potential tenant required a change in marketing strategy to identify one or more other large users for the PUD and caused delays in obtaining financing commitments needed before construction of the PUD could be undertaken. The applicant asserts that no substantive changes since the PUD was approved have occurred that would undermine the Commission's original approval of the project.

The Commission does not concur with the applicant's assessment of changed circumstances, and instead concludes that there have been substantial changes in material facts upon which the Commission based its approval of the PUD that undermine the Commission's justification for approving the PUD originally. The substantially changed circumstances surrounding the PUD militate against extension of the validity of the PUD approval.

OP's report enumerates numerous changes since the Commission originally approved the PUD, and OP has entered into discussions with the applicant regarding how the PUD can be modified to respond to those changes. As a result of the material changes in the circumstances surrounding the PUD, the Commission concludes that the underlying premise relied upon in originally granting approval of the PUD has changed. Significantly, the loss of a very large potential tenant, which the PUD was designed to attract, undermines the justification for the PUD's original building size and design. Absent a very large tenant such as DOT, the PUD design would likely require modification to accommodate a number of smaller tenants, reflecting a change from the original purpose of the PUD.

In addition, the Commission based its approval of the PUD in part on the applicant's statements that the PUD site had locational advantages that made it suitable for development for a federal agency or other large organizations for a headquarter facility. *See* Z.C. Order No. 910, Finding No. 60. The PUD was then considered important in encouraging federal agencies to remain in the District of Columbia and to locate in the Southeast quadrant, as well as in inducing private-sector companies to relocate from competing suburban markets to the District of Columbia. *See* Z.C. Order No. 910, Finding No. 61. Because the applicant now expects to redesign the project for a number of small users, the loss of DOT as the target user and the absence of other prospective "large, major headquarters type organizations" is a substantial change of a material

fact relied upon by the Commission in approving the PUD that undermines the Commission's justification for approving the original PUD.

Recent regulatory changes, especially the further development of the proposed Buzzard Point-Capitol Gateway overlay ("BP overlay") and the Anacostia Waterfront Initiative, further undermine the justification for approval of the PUD as originally designed. The zoning amendments raise concerns with respect to the height and setbacks of the PUD, as well as with certain design elements such as the pedestrian passageway. The Commission previously found that the PUD was generally consistent with the height, bulk, and setback requirements of the proposed BP overlay. *See* Order No. 910, Findings No. 17, 58. However, the Buzzard Point-Capitol Gateway overlay, which has not yet been finally adopted, now includes some provisions not anticipated when the PUD was originally adopted, including greater setbacks along the Anacostia River waterfront and a design review process.

There have also been significant changes in market conditions since the PUD was approved, which affect the Commission's justification for approving the PUD with respect to economic feasibility and viability of new development at the PUD site. The market for new development in the vicinity of the PUD site has changed dramatically, as new employees have moved into the Washington Navy Yard, spurring office development along M Street, and as areas of the District, including central Washington and Capitol Hill, have become increasingly attractive for residential development.

Part of the rationale for approval of the PUD was that a new project constructed at the PUD site would stimulate redevelopment of the Buzzard Point-Capitol Gateway area. The Commission then concluded that the PUD "promises to spur economic development in a Development Opportunity Area and the Central Employment Area as identified in the Comprehensive Plan." *See* Order No. 910, Findings No. 17 and 72 and Conclusion No. 4. However, as the likelihood of development of a mix of commercial, recreational, and residential uses along the Anacostia waterfront has increased due to recent changes in market conditions, there is less need for a "pioneer" project such as the approved PUD to spur desired redevelopment in the Buzzard Point-Capitol Gateway area.

The prevalence of other development activity in the vicinity of the PUD site undermines the justification for approving the PUD to "act as a pioneer and catalyst for mixed-use redevelopment" and a means to spur economic development that would not occur absent the PUD. *See* Z.C. Order No. 910, Findings No. 72 and Conclusion No. 4. The recent changes in market conditions also undermine the justification for approving the original PUD with respect to the applicant's assertions regarding the economic infeasibility of other types of development, including residential uses, at the PUD site, as well as the economic benefits to the District of Columbia associated with the PUD project relative to matter-of-right development.

The Commission concludes that substantial changes have occurred in the material facts upon which the Commission based its original approval of the PUD that undermine the Commission's justification for approving the original PUD. Accordingly, it is **ORDERED** that the Motion for

Extension of Time to extend the validity of the PUD approved in Z.C. Order No. 910 is **DENIED.**

VOTE: 3-2-0 (Carol J. Mitten, James Hannaham, and John G. Parsons voting to deny the motion; Anthony J. Hood, if favor of the motion and Peter G. May, by absentee vote, in favor of the motion.)

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Carol J. Mitten
Chairman
Zoning Commission



Jerrily R. Kress, FAIA
Director
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