

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-14B
Z.C. Case No. 08-14B
Kelsey Gardens Property Company, LLC
(Minor Modification to the Approved Planned Unit Development @
Square 421, Lots 67 and 68)
January 30, 2012

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on January 30, 2012. At the meeting, the Commission approved an application of Kelsey Gardens Property Company, LLC (the “Applicant”) for minor modifications to an approved planned unit development (“PUD”) for property consisting of Lots 67 and 68 in Square 421 (the “Property”).

The Commission determined that these modification requests were properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations.

FINDINGS OF FACT

1. By Z.C. Order No. 08-14, effective February 12, 2010, the Commission approved a consolidated PUD and related amendment to the Zoning Map for the construction of a mixed-use development (the “Project”) consisting of market-rate and affordable housing, neighborhood-serving retail, and townhouses.
2. Pursuant to Z.C. Order No. 08-14A, effective December 24, 2010, the Commission approved modifications to Conditions 10 and 12 of Z.C. Order No. 08-14, which required the Applicant to make certain monetary contributions to local community groups “prior to issuance of the first certificate of occupancy.”
3. In this proceeding, by letter dated December 20, 2011, the Applicant requested modifications to the approved PUD plans to modify the Project’s retail component by moving the previously approved 1,400-square-foot fitness center to the 7th Street frontage and allowing the space originally planned to house the fitness center at the rear of the building to be converted to residential space. This modification results in a net reduction in the amount of retail space to be provided in the PUD from 14,924 square feet to 13,363 square feet.
4. The Applicant indicated that the requested changes do not change any of the zoning parameters for the project (i.e., use, height, density, parking, etc.).

5. The Applicant served the modification request on Advisory Neighborhood Commission (“ANC”) 2C, which was the only party to the original proceeding and also served the Office of Planning (“OP”).
6. Through a letter dated December 23, 2012, the Applicant made a supplemental filing that contained a detail showing the elevator overrun behind the rooftop screen wall, an updated LEED Scorecard for the Project, and a set of the final approved plans for the Project. (Exhibits 5, 6, 7, and 8.)
7. The letter further noted that OP had raised concerns that the current developer of the site has substituted a reflective white roof for the vegetated rooftop areas shown previously on the approved plans. The letter explained that a modification was not requested because a vegetated roof was not made a condition to the PUD approval. Nevertheless, the Applicant indicated that it would request approval for this change if the Commission determined that such approval was needed.
8. OP submitted a report dated December 30, 2011, recommending that the Commission approve the requested changes as minor modifications. The report further recommended that the Commission approve the changes to the roof shown in the plans as minor modifications. (Exhibit 9.)
9. The ANC submitted a letter dated January 6, 2011, indicating that at a properly noticed meeting with a quorum present, the ANC voted to support of the Applicant’s request. (Exhibit 10.)
10. On January 9, 2012, at its regular monthly meeting, the Commission reviewed the application as a Consent Calendar matter as permitted by 11 DCMR § 3030. The Commission voiced concerns about whether the proposed changes in rooftop design, namely the proposal to install a White EPDM Roof System instead of the previously proposed green vegetated roof and the addition of the rooftop pool and associated storage, bathrooms and mechanical facilities, would fail to meet the setback requirements and thus would be inconsistent with the PUD as originally approved. In light of those concerns, the Commission decided to delay its decision on approval of the modification until its next meeting on January 19, 2012 and requested that the Applicant prepare a supplemental submission that would address those concerns.
11. On January 17, 2012, the Applicant filed its supplemental submission together with more detailed rooftop plans. (Exhibit 11.) The Applicant explained that although the proposed rooftop structures did not meet setback requirements and the limitation of the number of rooftop structures permitted, the approved PUD included relief from those requirements and the proposed modifications did not require any additional relief. The Applicant indicated that the change to a white EPDM Roof System would have different, but

substantial environmental benefits, consistent with the approved PUD. Further, the proposed white EPDM Roof System would satisfy the LEED rating provided in the approved PUD. The Applicant noted that although a white EPDM Roof System did not offer the same storm management benefits as a green, vegetated roof system; the Applicant would provide a cistern structure that would store the 15 year quantity volume as required by the District Department of the Environment (“DDOE”). In addition, all water collected by the cistern would be used for irrigation purposes.

12. At its meeting on January 19, 2012, the Commission considered the Applicant’s supplemental submission, and raised questions about the accuracy of some of the locations and dimensions of the rooftop structures. The Commission requested that the Applicant submit corrected information in time for the Commission’s meeting scheduled for January 30, 2012.
13. On January 25, 2012, the Applicant filed a second supplemental submission and a revised set of roof plans. (Exhibits 13 and 14.) In this submission, the Applicant detailed the three roof structure modifications, which included increases in the height of two of the structures with proportional increases in the setback from the frontage of the adjacent alley and a decrease in the height of the remaining roof structure with a proportional decrease in the setback from Q Street in order to properly align the roof structure with the stairs inside the building.
11. At the Commission’s meeting on January 30, 2012, the Commission found that approval of the modifications is appropriate and not inconsistent with its approval of the original PUD.

CONCLUSIONS OF LAW

Upon consideration of the record in this application, the Commission finds that the proposed modifications are consistent with the intent of the previously approved Z.C. Order No. 08-14, and are not inconsistent with the Comprehensive Plan.

The Commission concludes that approving the modifications are appropriate and not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

The Commission further concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations and Zoning Act.

The modifications do not impact the essential impact of the approved PUD, including use, height, density, parking, or lot occupancy. The modifications are minor such that consideration as a Consent Calendar item without public hearing is appropriate.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for modifications to a PUD approved pursuant to Z.C. Order No. 08-14 and 08-14A and orders revisions to two of the prior conditions of approval as follows:

Condition No. 1 of Z.C. Order No. 08-14 is hereby revised to read:

1. The PUD shall be developed in accordance with the site plan and architectural and landscape plans submitted as Exhibits 52, 59A, and 69A in the record of this case, as modified by Exhibits 2(A) and 14 of the record in Z.C. Case No. 08-14B, and as further modified by the guidelines, conditions, and standards of this Order

Condition No. 5 of Z.C. Order No. 08-14 is hereby revised to read:

5. The multi-family building shall contain approximately 13,363 –square feet of retail uses consistent with the final ground floor plans contained in Exhibit 2 of the record in Z.C. Case No. 08-14B.

All other provisions and conditions of Z.C. Order No. 08-14 as modified by Z.C. Order No. 08-14A shall remain in effect.

On January 30, 2012, upon the motion of Vice Chairman Schlater, as seconded by Commissioner Cohen the Zoning Commission **APPROVED** the application at its public meeting by a vote of **3-1-1** (Konrad W. Schlater, Marcie Cohen, and Michael G. Turnbull and to adopt; Peter G. May opposed; Anthony J. Hood not present, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on December 28, 2012.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING