

MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: Jennifer Steingasser, Deputy Director Development Review & Historic Preservation
DATE: July 20, 2012
SUBJECT: Extension Request – PUD Case 05-36 F

RECOMMENDATION: The Office of Planning (OP) recommends **approval** of the requested extension.

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| Applicant: | K Street Developers, LLC |
| Street Address: | 250 K Street, N.E. |
| Square/Lot | Square 749, Lot 67 |
| Ward / ANC | Ward, ANC |
| Project Summary: | Applicant requests extension of Order for PUD Phases II-A and II-B, which would add 500 dwelling units (including 50 affordable units) and 14,000 SF of retail space to the 212 units (including 28 affordable units) finished in Phase I. |
| Order Date: | Effective May 27, 2011 |
| Previous Extension: | ZC 05-36A - effective November 14, 2008 ZC 05-36D – effective May 27, 2011 |
| Order Expiration Date: | November 14, 2012 – deadline for filing building permit November 14, 2012 – deadline for starting construction |



Figure 1. PUD with Phase I constructed at right and undeveloped Phase II site to the left

EVALUATION OF THE EXTENSION REQUEST

§ 2408.10 allows for the extension of a PUD for “good cause” shown upon the filing of a written request by the applicant before the expiration of the approval; provided the Zoning Commission determines that the following requirements are met:

- (a) **The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond.**

The application submitted to the Zoning Commission is dated June 11, 2012 and has been in the public record since filing.

(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.

There has been no substantial change to the Zoning Regulations, the Comprehensive Plan or development near the PUD site that would affect the approved Phase II development. The completed and anticipated nearby development is the same as what was projected at the time the PUD was approved.

(c) The applicant demonstrates with substantial evidence that there is good cause for such an extension, as provided in § 2408.11.

§ 2408.11 sets out the conditions of good cause as:

- (a) An inability to obtain sufficient project financing for the planned unit development, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control;*
- (b) An inability to secure all required governmental agency approvals for a planned unit development by the expiration date of the planned unit development order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or*
- (c) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the planned unit development order.*

The applicant has submitted a sworn affidavit from Ronald J. Cohen, the President of K Street Manager, Inc., the company that manages K Street Developers, that describes how the application meets conditions "a" and "c": It:

- Notes that economic conditions have precluded the securing of investors and financing, and listing the names of more than 15 investor groups with whom the applicant has met to secure financing for the project, and stating that investment brokers in New York City pursued an additional 30 investor groups;
- States that the projected delivery of numerous residential units in NoMA over the next 18 months have added to investor caution about financing additional units nearby; and
- States that the owner's involvement with litigation over Phase I of the PUD has distracted attention from the development of Phase II; and

The applicant also notes that the absorption of the 212 units in Phase months in just 9 months, and the pending arrival of a large grocery 2 blocks from the PUD indicate that the long-term prospects for completion of Phase II are positive.

The applicant has had a long-standing interest in the development of the site and NoMA generally. Although the New York Avenue metro station has spurred the construction of a mixed use neighborhood west of the tracks, the blocks east of the tracks have been slower to develop, particularly with the constraints on financing in the last four years. Nevertheless, OP believes the applicant's positive assessment of the PUD site's prospects is warranted, and recommends that the Commission approve an additional extension of the Phase II approval.

JS/slc
Stephen Cochran, Case Manager: