

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR



May 7, 2012

Norman M. Glasgow, Jr.
Steven E. Sher
Director of Zoning and Land Use Services
Holland & Knight LLP
Suite 100
2099 Pennsylvania Avenue, N.W.
Washington D.C. 20006

Re: Washington Gateway PUD 06-14
New York and Florida Avenues, N.E.

Gentlemen:

This is to follow-up on our discussion on Wednesday, February 1, 2012, and Friday February 14, 2012, concerning the above-referenced property (lots 814, 815, 816, 817, 818, 819, 7000, 7001 and 7002 in Square 3584) located at the intersection of New York and Florida Avenues, N.E. The property is zoned C-3-C and was the subject of a planned unit development (PUD) application to the Zoning Commission. By Order No. 06-14, dated February 12, 2007, and effective June 29, 2007, the Commission approved the PUD.

The project consists of two buildings on a single lot. The east building is an office building with two wings and a connecting wing. The west building was originally approved as a hotel and apartment house. By Order No. 06-14B, dated April 25, 2011, and effective July 22, 2011, the Commission approved modifications to the PUD to allow the applicant the option to develop the west building as an apartment house without the hotel component. By Order No. 06-14C, dated April 25, 2011, effective July 22, 2011, the Commission approved a two year extension of time, meaning that a permit application must be filed by June 29, 2013 and construction must commence no later than June 29, 2014.

You advised that the developer is preparing to go forward with the construction of the apartment house portion of the project. Construction of the office building would be unrelated to the apartment house.

Order No. 06-14B is the operative approval which would govern the project, assuming that you proceed without the hotel component. The conditions of that order are as follows:

A. PROJECT DEVELOPMENT

1. The Applicant has the option to develop the PUD consistent with Z.C. Order No. 06-14. If the Applicant develops the original project, the conditions of Z.C. Order 06-14 will apply to the project. If the Applicant develops the project as modified by this Order, the following conditions will apply.
2. The Applicant may develop the PUD, as modified herein, in which case the project shall contain approximately 594,896 square feet of office use; approximately 346,405 square feet of residential use; and approximately 12,070 square feet of retail use. The maximum density shall be 7.08 FAR. The maximum height of the building shall be 130 feet, as shown on the Plans. The building may include roof structures in excess of that height, with a height not to exceed 18.5 feet above the roof upon which they are located, as shown on the Plans.
3. The PUD Modification shall be developed in accordance with the plans prepared by SK&I Architectural Design Group, dated April 11, 2011, marked as Exhibit 39 of the record (the "Plans").
4. The Applicant shall continue to comply with affordable housing requirements of Condition No. 3 of Z.C. Order 06-14, which is incorporated into this Order pursuant to Condition B.1. The PUD shall further devote an additional 9,337 square feet of gross floor area of the residential gross floor area for the project to affordable housing for households with income that do not exceed 80% of the AMI ("Affordable Units"). The Affordable Units shall have the same proportion of unit types (studio, one-bedroom and two-bedroom units) as the market rate units. The construction, the affordability control period, and the method of selecting the occupants/purchasers of the Affordable Units shall be in accordance with the Planned Unit Development Inclusionary Housing Commitment Standards dated December 4, 2006, and marked as Exhibit No. 38 of the record of Z.C. Case Number 06-14. The Affordable Units shall be distributed as depicted in the chart submitted as part of the Applicant's post-hearing submission, dated April 11, 2011, and marked as Exhibit 38 of the record.
5. Parking for the modified PUD shall be provided at a ratio of 0.6 space per dwelling unit for the residential use; one parking space for each 1,800 square feet of gross floor area of office use; and one parking space for each 3,000 square feet of gross floor area for retail use. At least two of the parking spaces shall be reserved for use by a car-sharing service.

6. The project shall include three 30-foot-deep loading berths and one 20-foot-deep loading berth for the office use, and one 55-foot-deep and one 20-foot-deep loading berth for the residential/hotel use.
7. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To have a roof structure that does not meet the setback, as required under §§ 411 and 770.6 of the Zoning Regulations, to the extent depicted in the Plans and the architectural plans and drawings approved in Z.C. Order No. 06-14;
 - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atrium and mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not change the exterior configuration of the building;
 - c. To make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other minor changes to comply with the District of Columbia building code or that are otherwise necessary to obtain a final building permit or any other applicable approvals;
 - d. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, as long as the number of parking spaces does not decrease below the minimum specified in the Zoning Regulations; and
 - e. To eliminate the interior drive to the south section of the office building should operational and/or security needs require.

B. PUBLIC BENEFITS

1. The PUD, as modified, shall comply with Condition Nos. 3, 5 through 8, and Condition No. 15 of Z.C. Order No. 06-14.

C. MISCELLANEOUS

1. Prior to the issuance of a building permit for the project, the Applicant shall record a covenant in the land records of the District of Columbia, between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General. Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Commission.
2. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.
3. The PUD shall be valid until June 29, 2011, in accordance with Z.C. Order No. 06-14A. Within such time, an application must be filed for a building

permit as specified in 11 DCMR § 2409.1. Construction must commence no later than June 29, 2012. Failure to take these actions will result in the expiration of the PUD approval as of the applicable date.

4. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. (Act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

The public benefits referred to in Condition B.1 were set forth in an Appendix attached to the Order, a copy of which is attached. In light of those conditions, you have asked me to confirm under what circumstances the right to build and occupy the apartment house would be unconditionally vested; i.e., when would an action or the failure to act by the owner of the office building site no longer have any consequence for the owner of the apartment house?

The conditions set forth in Section A all relate to the construction of the buildings. Accordingly, you must demonstrate when you apply for building permits that the plans meet the specific requirements of conditions A.2 through A.6; i.e., the buildings must not exceed the height and density parameters of A.2, the design of the building shall be in accordance with the plans referenced in A.3, affordable housing must be provided as set forth in A.4, parking must be provided as set forth in A.5 and loading must be provided as set forth in A.6. The specific design requirements may be modified as set forth in A.7. Assuming that your plans meet those specific conditions, this office will approve those plans as complying with the conditions of Order No. 06-14B. Further assuming that the building is constructed in accordance with the approved permit plans, upon inspection to determine compliance, this office will sign off on the issuance of a certificate of occupancy for the building. With respect to the design conditions, assuming that: (1) the building is kept in the same configuration as it is constructed; (2) you continue to use the premises for the uses shown on the approved plans; and (3) you have certificates of occupancy for all the uses in the building, you would be authorized to continue to occupy the building without regard to any uses allowed or approved or existing on the office building site.

The amenity proffers for the PUD are referred to in Condition B.1 and are set forth in the attached Appendix. All of the conditions can be satisfied in whole or in pertinent part on the apartment building portion of the PUD project, except for Conditions 7 and 8, which I discuss below. Condition 1, regarding affordable housing, is a reiteration of Condition No. A.4. Condition No. 5 requires the applicant to design and implement a transportation management plan. Condition No. 6 requires the applicant to install a traffic signal at the intersection of Florida Avenue and 2nd Street. Condition No. 8 requires the applicant to abide by the terms of the First Source Employment Agreement entered into with the Department of Employment Services. With regard to the amenity proffers, assuming that all of the features required by Conditions 3, 5, 6 and 15 are installed or accomplished by the time of the issuance of a certificate of occupancy for the

apartment house, any action or failure to act by the office building owner would give this office no reason to take any action against the apartment building owner or occupants.

Conditions 7 and 8 apply to the proposed connection between the PUD project and the Metropolitan Branch Trail along the eastern boundary of the PUD site. That connection is to be made through the office building and is required to be done pursuant to an agreement with the District Department of Transportation (DDOT). The final fulfillment of the requirement to provide that connection cannot occur until the office building is constructed.

The owner of the property, CK MRP Washington Gateway LLC, and DDOT have entered into an agreement, dated February 2, 2012, hereinafter the "Agreement," regarding the construction and operation of the Trail connection both on a permanent basis and on an interim basis if the residential building is completed and the office building construction has not started. A copy of that Agreement is attached.

If the permanent connection has been installed as part of the construction of the office building, the office building owner will be responsible for the continued location and operation of the connection, as set forth in the agreement. In the event of a violation of that condition, this office would seek enforcement against the owner(s) of the office building and not against the owner(s) of the apartment building.

If the permanent connection has not been installed because the office building has not yet been constructed, the Agreement provides that CK MRP Washington Gateway LLC and the then current owner of the office building site are responsible for constructing the interim connection. This office will not approve a certificate of occupancy for the residential building until the interim connection has been completed. Once the interim connection is completed, if there is any violation of the requirements related to the connection, enforcement action will be pursued against the office building owner(s) and not against the owner(s) of the apartment building. For any other violation of Order No. 06-14B as it relates solely to the office building, enforcement action will be pursued against the office building owner(s) and not against the owner(s) of the apartment building.

I note that the Agreement provides that the interim connection will be demolished upon the commencement of construction of the office building and access to the interim improvements will be restricted until the permanent connection is constructed and opened. If the office building is under construction at the time that construction on the apartment building is completed, assuming that the apartment building has been constructed in accordance with the approved permit plans, upon inspection to determine compliance, this office will sign off on the issuance of a certificate of occupancy for the apartment building and it will then be the responsibility of the office building owner(s) to complete the construction of the building including the permanent connection.

The miscellaneous conditions (C.1 through C.4) impose certain requirements as to process and timing. As relevant to your question, Condition C.1 requires that the PUD covenant be recorded prior to the issuance of a building permit for the project. It is my understanding that the PUD covenant for the entire property has already been recorded.

I note also that Order No. 06-14B includes the following language as a preface to the conditions:

"For the purposes of these conditions, the term "Applicant" shall mean the person or entity then holding title to the Subject Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Subject Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner."

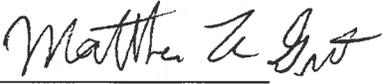
My review of the conditions and the obligations related to the residential building and the office building leads me to conclude that the compliance with the conditions is reasonably assigned to the residential building owner(s) and the office building owner(s), as set forth above.

You have also asked me to address the circumstances which would apply if, at some point in the future, the building suffered a loss or casualty and the owner desired to rebuild the building. The Zoning Regulations, in §2409, provide for the implementation of a PUD approval. The relevant portions of that section read as follows:

- 2409.2 The Zoning Administrator shall not approve a permit application unless the plans conform in all respects to the plans approved by the Commission, as those plans may have been modified by any guidelines, conditions, or standards that the Commission may have applied.
- 2409.3 The Zoning Administrator shall not approve a permit application unless the applicant has recorded a covenant in the land records of the District of Columbia between the owner or owners and the District of Columbia satisfactory to the Office of the Attorney General and the Zoning Administrator, which covenant will bind the owner and all successors in title to construct on and use the property only in accordance with the adopted orders, or amendments thereof, of the Commission.
- 2409.5 The orders of the Commission issued in accordance with this chapter shall have all the force of this title, and violations shall be prosecuted in accordance with the provisions of § 3201 of this title.

The PUD covenant for the subject property is dated August 24th, 2007, and was recorded in the Official Records of the Recorder of Deeds on September 21, 2007, as Document No. 2007123750. I read the above-cited provisions of the Regulations to limit the use of and construction on the property to only that which is provided for by the PUD approval. If, in the future, a building permit was applied for to repair, replace or rebuild all or a portion of the building, assuming that the plans associated with such a permit application "conformed in all respects to the plans approved by the Commission," the Office of the Zoning Administrator would sign-off on the issuance of such a permit. Further assuming that the building was constructed in accordance with the approved plans and complied with all other applicable codes and regulations, a certificate of occupancy would be issued for the use of the building for the purposes specified in the Zoning Commission Orders.

Please let me know if I may be of further assistance.

Sincerely, 
Matthew Le Grant
Zoning Administrator

Attachments:

Appendix to Order No. 06-14B

Agreement between CK MRP Washington Gateway LLC and DDOT