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August 25, 2008

HAND DELIVERY

District of Columbia Zoning Commission
441 4th Street, NW
Second Floor
Washington, DC 20001

Re: Request for Extension of Time, Zoning Commission Order No. 05-25 (Consolidated
Planned Unit Development – 4th Street and Rhode Island Avenue, N.E. – H Street
Community Development Corporation)

Dear Members of the Zoning Commission:

On behalf of the Applicant in the above-referenced planned unit development ("PUD"), this letter serves as a request for a two (2) year extension of Zoning Commission Order No. 05-25 such that an application must be filed for a building permit for the PUD no later than October 23, 2010 and construction must start no later than October 23, 2011. This request is filed pursuant to §2408.10 of the Zoning Regulations for good cause shown herein. A copy of Order No. 05-25 is attached as Exhibit A. A check in the amount of \$400.00 made payable to the D.C. Treasurer for the requisite filing fee pursuant to Section 3040.5 of the Zoning regulations is also enclosed.

The Applicant respectfully requests that the Zoning Commission consider this request at its September 29, 2008 special public meeting.

I. INTRODUCTION

A. Factual Background

By Order No. 05-26, the Zoning Commission approved a PUD for the property located on Lot 808 in Square 3629 ("the Subject Property"). The Subject Property consists of approximately 39,190 square feet of land area and is located on the east side of 4th Street between Rhode Island Avenue and Edgewood Street, N.E. The Subject Property is zoned C-3-A, and the Applicant did not seek a zoning map amendment in connection with the PUD.

ZONING COMMISSION
District of Columbia
CASE NO. 05-25A
EXHIBIT NO. 1

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ZONING COMMISSION
District of Columbia

CASE NO. 05-25A

EXHIBIT NO. 1

The approved PUD includes construction of a nine story apartment house containing approximately 170 units, including approximately 3,000 square feet of retail space on the ground floor. The project will also include approximately 173,355 square feet devoted to residential use. The proposed FAR of the building is 4.5. A minimum of twenty percent of the residential floor area, or 34,671 square feet, will be devoted to affordable housing. The height of the new building will be 90 feet. The building will contain approximately 128 underground parking spaces.

As discussed in more detail below, the Applicant is requesting this time extension based upon unexpected delays beyond the Applicant's control.

B. Jurisdiction of the Zoning Commission

Section 2408.10 of the Zoning Regulations authorizes the Zoning Commission to extend the time periods set forth in Section 2408.8 (two year requirement to file for a building permit) and Section 2408.9 (three year requirement to begin construction), provided the following conditions 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;
- (b) There is no substantial change in any of the materials 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; and
- (c) The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in §2408.11.

The sole substantive criterion for determining whether a PUD should be extended is whether there exists "good cause shown." The Zoning Regulations define "good cause shown" in §2408.11, as evidence of one or more of the following:

- (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 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.

II. THE EXTENSION REQUEST WAS SERVED ON ALL PARTIES

The Applicant has served this request for extension of time on all parties to the initial PUD application, allowing them the required time period to respond, as evidenced by the Certificate of Service attached hereto.

III. THE APPLICANT DEMONSTRATES GOOD CAUSE FOR EXTENSION OF THE PUD VALIDITY

A. The Project Has Experienced Delay Beyond Applicant's Control

Section 2408.11(a) supports the grant of an extension of PUD validity for projects confronting difficulties with financing based upon changes in economic and market conditions beyond an applicant's control. Specifically, the current residential market has rendered it difficult for the Applicant to obtain sufficient financing for the project, despite the Applicant's good faith efforts.

Since the PUD was initially approved, the unanticipated swift change in the sales and rental environment for the construction of safe and decent workforce housing has suffered significant downturns that have impeded the Applicant's ability to secure financing for this project. The need for workforce housing in the District of Columbia has increased, while the financial community's ability to commit funds for projects has come under high scrutiny primarily due to the inability to accurately project construction costs, carrying costs, and sales/rental income. Indeed, the Zoning Commission has recently agreed in a number of cases that the recent changes in the economy and residential housing market conditions, combined with predictions that housing values will continue to decline, has resulted in a lack of willingness on the part of lenders to finance projects.

To date, the Applicant has been faced with the following impediments in attempting to obtain financing for the project:

- Construction costs for the project have increased exponentially since the PUD was approved. The Applicant's estimated construction costs for the project have ballooned from approximately \$35 million dollars to over \$56 million dollars.
- The Applicant was tentatively selected by the D.C. Department of Housing and Community Development ("DHCD") to receive a supportive grant of approximately \$7.5 million dollars to assist in paying for the Project's construction costs. However, due to the continuous escalation in construction costs, the DHCD grant is no longer sufficient to cover the gap in financing.
- The Applicant and KSI Development Company prepared a number of extensive feasibility studies concerning the economic viability of the Project. However, thus far, the Applicant's efforts have not yielded financing for the Project because market conditions and construction cost have continued to increase at an unpredictable rate.

- The Applicant's initial lender, which is a well-known banking institution, has withdrawn its initial interest in financing the Project because of the uncertainty in market conditions and increasing cost of construction.
- The Applicant also worked extensively with another reputable lender to structure financing for the project. However, after several months of working together, the lender underwent a major internal reorganization and ultimately withdrew their proposal to proceed with financing the Project.
- The Applicant has also worked with a local housing development corporation to develop scenarios for funding the Project. However, the housing development corporation has withdrawn from the project because of the softening of the housing market.

B. No Substantial Changes to Approved PUD

In addition to requiring the demonstration of "good cause," §2408.10 of the Zoning Regulations requires the following:

- (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 ...

The project has not changed in any form, and the extension is requested in order to enable the Applicant to continue its diligent efforts to secure favorable financing for the project. Moreover, there has not been any change in any of the material facts upon which the Zoning Commission based its original approval of the PUD, and the Applicant remains committed to moving forward with the Project and fully complying with the conditions and obligations imposed as part of the PUD approval.

C. No Hearing is Necessary

Section 2408.12 of the Zoning Regulations provides:

The Zoning Commission shall hold a public hearing on a request for an extension of the validity of a planned unit development only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the planned unit development concerning any of the criteria set forth in §2408.11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.

A hearing is not necessary for this request since there are not any material factual conflicts generated concerning any of the criteria set forth in §2408.11. The only other party to this application was Advisory Neighborhood Commission ("ANC") 5C, and the Applicant has served a copy of this request on ANC 5C. There is no dispute to the facts that: (1) the Applicant has been unable to secure financing for the project, or (2) that there are significant impediments in the market place to proceeding with a residential project at this time. Thus,

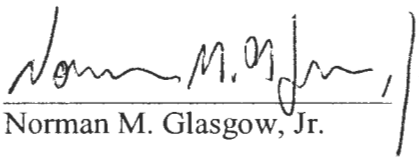
there cannot be any material factual conflicts generated concerning any of the criteria set by which the Zoning Commission is required to consider this request.

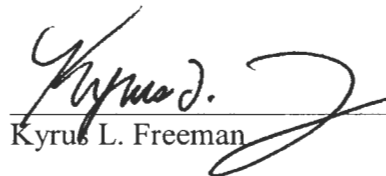
IV. CONCLUSION

In light of this demonstration of good cause and for the reasons stated herein, the Applicant respectfully requests that the Commission approve a two (2) year extension of the approved PUD, such that an application must be filed for a building permit no later than October 23, 2010 and construction must start no later than October 23, 2011. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 
Norman M. Glasgow, Jr.


Kyrus L. Freeman

Attachments

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2008, a copy of the Applicant's Request for Extension of Time, Zoning Commission Order No. 05-25 (Consolidated Planned Unit Development – 4th Street and Rhode Island Avenue, N.E. – H Street Development Corporation) was served via hand delivery on the following:

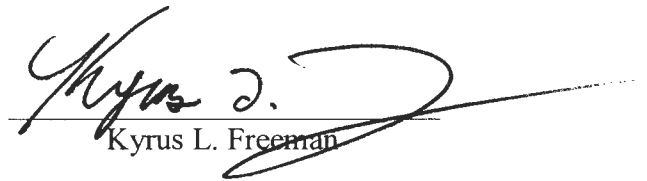
Advisory Neighborhood Commission 5C
202 Bates Street, NW
Washington, DC 20001
Attention: Anita Bonds, Chair

Marshall Phillips, Sr.
ANC 5C-08 Single Member District Representative
336 Channing Street, NE
Washington, DC 20002

Jennifer Steingasser
D.C. Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002

And by first class mail to:

Advisory Neighborhood Commission 5C
P.O. Box 77761
Washington, DC 20013


Kyrus L. Freeman