

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 05-25A

As Secretary to the Commission, I hereby certify that on **APR 6 2009** copies of this Z.C. Order No. 05-25A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|---|
| 1. <i>D.C. Register</i> | 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 |
| 2. Norman M. Glasgow, Jr. Esq.
Kyrus L. Freeman, Esq.
Holland & Knight
2099 Pennsylvania Avenue, N.W. # 100
Washington, D.C. 20006 | 6. Councilmember Thomas |
| 3. Anita Bonds, Chair
ANC 5C
P.O. Box 77761
Washington, DC 20013 | 7. Office of Planning (Harriet Tregoning) |
| 4. Commissioner Marshall R. Phillips, Sr.
ANC/SMD 5C08
336 Channing Street, N.E.
Washington, DC 20002 | 8. DDOT (Karina Ricks) |
| | 9. General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| | 10. Office of the Attorney General
(Alan Bergstein) |

ATTESTED BY:

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

ZONING COMMISSION
District of Columbia

CASE NO.

05-25A

EXHIBIT NO.

5

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

ZONING COMMISSION
District of Columbia
CASE NO. 05-25A
EXHIBIT NO. 5

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 05-25A
Z.C. Case No. 05-25A
H Street Community Development Corporation
(Two-Year PUD Time Extension @ 4th Street & Rhode Island Avenue, N.E.)
October 20, 2008

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on October 20, 2008. At the meeting, the Commission approved a request from the H Street Community Development Corporation (the "Applicant") for a time extension for an approved planned unit development ("PUD") for property consisting of Lot 808 in Square 3629 (the "Subject Property") pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations. For the reasons stated below, the Commission granted the request, finding that an extension of time of the validity of the PUD is in the best interests of the District of Columbia and is consistent with the intent and purposes of the Zone Plan.

FINDINGS OF FACT

1. By Z.C. Order No. 05-25, the Commission approved the construction of a nine story apartment house containing approximately 170 units and 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 density is 4.5 floor area ratio ("FAR"). A minimum of 20% 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 parking spaces.
2. By letter dated and received by the Commission on August 25, 2008, the Applicant filed a request to extend the validity of the PUD approval for a period of two years, such that an application must be filed for a building permit no later than October 23, 2010, with construction to start no later than October 23, 2011. The letter indicates that the project has experienced delay beyond the Applicant's control, specifically, since the PUD was initially approved, the unanticipated swift change in the residential sales and rental environment has impeded the Applicant's ability to secure financing for this project. As indicated in the letter, 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 Commission has recently found 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.

3. The Applicant identified the following specific impediments in attempting to obtain financing for the project since approval of the PUD: (1) construction costs for the project have increased exponentially; (2) the Applicant was tentatively selected by the D.C. Department of Housing and Community Development ("DHCD") to receive a supportive grant to assist in paying for the construction costs; however, due to the continuous escalation in construction costs, the DHCD grant is no longer sufficient to cover the gap in financing; (3) despite preparing a number of extensive feasibility studies concerning the economic viability of the project, these efforts have yet to yield project financing; (4) the Applicant's initial lender withdrew its interest in financing the project; and (5) the Applicant has been unable to secure project financing from additional sources, including a reputable lending institution and a local housing development corporation.
4. The only other party to this application was Advisory Neighborhood Commission ("ANC") 5C. The Applicant served a copy of this request on ANC 5C. By resolution dated September 16, 2008, and marked as Exhibit 3 in the record of this case, ANC 5C reaffirmed its continued support for the project and voted unanimously to support the extension request.

CONCLUSIONS OF LAW

The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties and all parties are allowed 30 days to respond; (b) there is no substantial change in any material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) substantial evidence[▲] there is good cause for the extension based on the criteria established in § 2408.11. (11 DCMR § 2408.10.) The three criteria are: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD 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 that renders the applicant unable to comply with the time limits of the PUD order. (11 DCMR § 2408.11.)

The Commission concludes the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.

The Commission concludes there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.

The Commission concludes the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a), the Applicant's inability to obtain sufficient project financing for the PUD, following its diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond its control.

The Commission 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.

The approval of the time extension is not inconsistent with the Comprehensive Plan.

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 a two-year time extension of the approved PUD in Z.C. Order No. 05-25.

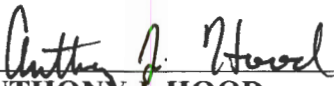
The final PUD approved by the Commission shall be valid until October 23, 2010, within which time an application shall be filed for a building permit, as specified in § 2409.1. Construction shall start no later than October 23, 2011. If either of these two events does not occur when required, and no further request for an extension is made and granted, the PUD approval shall expire.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. 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 that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

For the reasons stated above, the Commission concludes that the Applicant has met its burden; it is hereby **ORDERED** that the application be **GRANTED**.

On October 20, 2008, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, Peter G. May, and Michael G. Turnbull to adopt; Curtis L. Etherly, Jr., not present, not voting).

In accordance with the provisions of 11 DCMR §3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on APR - 3 2009.



ANTHONY J. HOOD
CHAIRPERSON
ZONING COMMISSION



RICHARD S. NERO, JR.
ACTING DIRECTOR
OFFICE OF ZONING