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ZONING COMMISSION  
District of Columbia

CASE NO. 05-37A

EXHIBIT NO. 4

ZONING COMMISSION  
District of Columbia  
CASE NO.05-37A  
EXHIBIT NO.6

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 05-37A**

**Z.C. Case No. 05-37A**

**Station Townhouses, LLC**

**(Two-Year Time Extension at G, H, 2<sup>nd</sup> and 3<sup>rd</sup> Streets, N.E.)**

**October 19, 2009**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on October 19, 2009. At the meeting, the Commission approved a request from Station Townhouses, LLC (the "Applicant") for a time extension for an approved consolidated Planned Unit Development ("PUD") and related map amendment for property consisting of Lots 39-41, 45, 48, 801, 804-806, 811, 813, 814, 856, 857, and 860 in Square 752 (the "Property"), pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

**FINDINGS OF FACT**

1. By Zoning Commission Order No. 05-37 ("Order No. 05-37"), the Commission approved a consolidated PUD and related zoning map amendment for a portion of the Property to C-3-C. The approved PUD authorized construction of a residential building containing a maximum of 389,101 square feet of gross floor area, having a maximum density of 5.07 FAR. The project will include approximately 302 residential units and 25,777 square feet of gross floor area devoted to ground floor retail and second floor professional space. The ground floor retail will be generally located at the corner of 3<sup>rd</sup> and H Streets and along 2<sup>nd</sup> Street to G Street. The maximum height of the building will be 100 feet at the corner of 2<sup>nd</sup> and H Streets, with steps in heights and set backs as shown on the approved plans. The project will include a minimum of 318 parking spaces in a below-grade parking garage as well as 60 tandem residential parking spaces. The project will include approximately 20,570 square feet of gross floor area devoted to affordable housing units as well as a variety of public benefits and project amenities. Order No. 05-37 became effective upon its publication in the *D.C. Register* ("DCR") on April 11, 2008.
2. By letter dated and received by the Commission on September 3, 2009, the Applicant filed a request to extend the validity of the PUD approval for a period of two years. The request, if approved, would require that an application for a building permit be filed no later than April 11, 2012, and construction must be started no later than April 11, 2013. The Applicant's request was supported by an affidavit from the Applicant setting forth details of the Applicant's inability to obtain project financing at this time, as discussed in Finding Nos. 3 and 4.
3. The Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. The Applicant has taken many steps to move the project forward, including the following:

- (a) Recording a PUD Covenant in the Land Records for the District of Columbia, as required by Condition No. 25 of Order No. 05-37 and § 2409.3 of the Zoning Regulations;
  - (b) Donating \$83,500 to the Capitol Hill Restoration Society on November 12, 2008, for use in completing a professional survey of properties for inclusion in a possible future extension of the Capitol Hill Historic District, in accordance with Condition No. 20 of Order No. 05-37;
  - (c) Fulfilling the obligations of Condition No. 21 of Order No. 05-37, requiring the Applicant to survey and document those potentially eligible structures to be demolished within the Property in accordance with the standards for documentation set forth in the record of Case No. 05-37; and
  - (d) Submitting raze permit applications in April 2008, for razing operations on the Property, which as of the date of the application have been approved by the D.C. Historic Preservation Office but are still pending approval from other District departments.
4. The real estate market has been subject to, and continues to suffer from, severe financing, construction, sales, and other impediments. As a result of the current economic climate and uncertainty in market conditions, financial institutions have frozen lending operations or ceased them entirely. Based on the Statement of Facts of the Applicant dated September 2, 2009 and submitted with the application, the Applicant has been unable to obtain project financing for the approved PUD project despite its continuing support for the project, track record, and financial wherewithal. The Applicant's best efforts have not resulted in project financing from the various lending institutions with which it has worked. Thus, there is not sufficient project financing for the project to move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control.
5. The Applicant served a copy of the request on all parties (including Advisory Neighborhood Commission ("ANC") 6C, Square 752 Residents, and the Stanton Park Neighborhood Association) on September 3, 2009. None of the parties responded to the application.
6. Because the Applicant demonstrated good cause with substantial evidence pursuant to § 2408.11(a) of the Zoning Regulations, the Commission finds that the request for the two-year time extension of the approved PUD should be granted.
7. Based on the report of the Office of Planning and the photographs included therein, the Commission finds that there has been no detrimental change in the condition of the Property since approval of the PUD that would indicate that the application should not be granted.

### CONCLUSIONS OF LAW

1. 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 to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Zoning Commission based its original approval of the PUD 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. (11 DCMR § 2408.10.) Section 2408.11 provides the following criteria for good cause shown: (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 reasonable 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 or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.
2. The Commission concludes that 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.
3. The Commission concludes there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.
4. The Commission is required under D.C. Official Code § 1-309.10(d) (2001) to give great weight to the affected ANC's recommendations. The ANC did not respond to the application.
5. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a). Specifically, the Applicant has been unable to obtain sufficient project financing for the PUD, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.
6. Section 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11.

7. The Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.
8. 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.

### **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 consolidated PUD and related map amendment approved in Zoning Commission Case No. 05-37. The consolidated PUD and related map amendment approved by the Commission shall be valid until April 11, 2012, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than April 11, 2013.

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, disability, source of income, genetic information 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 Applicants 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.

On October 19, 2009, upon the motion of Chairman Hood, as seconded by Vice Chairman Keating, the Zoning Commission **ADOPTED** this Order by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt).

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 November 20, 2009.