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September 3, 2009

VIA HAND DELIVERY

Zoning Commission for the
District of Columbia
441 4th Street, N.W.
Suite 210-S
Washington, DC 20001

**Re: Request for Extension of Time, Zoning Commission Order No. 05-37
(Consolidated PUD and Related Zoning Map Amendment)**

Dear Members of the Zoning Commission:

On behalf of Station Townhouses LLC¹ (the "Applicant"), this letter serves as a request for a two-year extension of the consolidated planned unit development and related map amendment ("Consolidated PUD") approved in Zoning Commission Order No. 05-37 ("Order No. 05-37"). The request, if approved, would require that an application for a building permit must be filed no later than April 11, 2012, and construction must be started no later than April 11, 2013. A copy of Order No. 05-37 is attached as Exhibit 1.

This request is filed pursuant to Section 2408.10 of the Zoning Regulations for good cause shown herein. A completed application for the extension is submitted herewith, and 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 October 19, 2009, public meeting.

I. INTRODUCTION

A. Factual Background

By Order No. 05-37, the Zoning Commission approved the Consolidated PUD for the property located between 2nd and 3rd Streets, N.E., and G and H Streets, N.E. (known as Lots 39 -

¹ Station Townhouses LLC is the current property owner, a single purpose entity wholly owned by Station Holdings LLC, the applicant in Zoning Commission Case No. 05-37. Station Holdings LLC is a joint venture between Louis Dreyfus Property Group LLC and Fisher Brothers Washington II LLC.

41, 45, 48, 801, 804 - 806, 811, 813, 814, 856, 857, and 860² in Square 752) (the "Property") and a related application to amend the Zoning Map to C-3-C for a portion of the Property. The Property consists of approximately 76,613 square feet of land. The Property is zoned C-2-A, HS/C-2-B, and C-3-C by virtue of the zoning map amendment related to the PUD.

The approved Consolidated PUD includes 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 3rd and H Streets and along 2nd Street to G Street. The maximum height of building will be 100 feet at the corner of 2nd 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 sixty 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.

The Zoning Commission approved this project and issued Order No. 05-37, which became effective upon publication in the *D.C. Register* on April 11, 2008. Based on this order, the Applicant is required to file an application for a building permit for the project no later than April 11, 2010. Construction must begin no later than April 11, 2011. As is discussed in more detail below, the Applicant is requesting a two-year 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 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; and
- (c) The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in §2408.11.

² Lot 860 was formerly known as Lot 32, which is identified as being part of the PUD Site in Order No. 05-37.

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 parties to this case were Advisory Neighborhood Commission 6C ("ANC 6C"), Square 752 Residents, and the Stanton Park Neighborhood Association. As indicated on the Proof of Service attached hereto, the Applicant has served this request for extension of time on all parties, allowing them the required time period to respond.

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. As the Commission has recognized in recent months, the real estate market has been subject to, and continues to suffer from, severe financing, construction, sales and other impediments. This major change in the real estate market has rendered it practically impossible for the Applicant to obtain project financing, despite the Applicant's good faith efforts.

The Applicant has taken many steps to move the project forward, including the following:

- Recorded a PUD Covenant in the Land Records for the District of Columbia, as required by Condition No. 25 of Order No. 05-37 and Section 2409.3 of the Zoning Regulations.
- Donated \$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. A copy of the letter acknowledging receipt of that payment is attached as Exhibit 2.

- Fulfilled 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 Zoning Commission Case No. 05-37. The HABS documentation materials were sent to Gary Peterson, Capitol Hill Restoration Society on September 10, 2008. A copy of the letter transmitting this information is attached as Exhibit 3.
- Submitted raze permit applications in April, 2008, for razing operations on the Property. These applications have been approved by the DC Historic Preservation Division but are still pending approval from other District departments, including the District Department of the Environment and the Department of Health. Copies of the permit applications and approvals from the DC Historic Preservation Division are attached as Exhibit 4.

As a result of the current economic climate and uncertainty in market conditions, financial institutions have frozen lending operations or ceased them entirely. Accordingly, as is set forth in the Statement of Facts, attached as Exhibit 5, 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. Thus, this request for extension satisfies the sole criterion for good cause shown as set forth in Section 2408.11(a) of the Zoning Regulations.

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 the necessary project financing for development of the project. Moreover, there has not been any change in any of the material facts upon which the Zoning Commission based its approval of the Consolidated 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 Consolidated PUD approval. This commitment has been evidenced by the many steps that the Applicant has taken in the development process, including fulfillment of several amenity commitments to benefit the neighborhood.

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. There is no dispute that: (1) the Applicant has been unable to secure the necessary project financing for the project at this time, or (2) there are significant impediments in the market place to proceeding with the project at this time. Thus, there cannot be any material factual conflicts generated concerning any of the criteria 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-year extension of the approved Consolidated PUD, such that an application must be filed for a building permit no later than April 11, 2012 and construction must start no later than April 11, 2013. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By:


Christy Moseley Shiker

Attachments

cc:	Jennifer Steingasser, Office of Planning	(Via Hand Delivery; w/atts)
	Joel Lawson, Office of Planning	(Via Hand Delivery; w/atts)

PROOF OF SERVICE

I hereby certify that on September 3, 2009, a copy of the foregoing Applicant's Request for Extension of Time was served on the following organizations as stated below:

Advisory Neighborhood Commission 6C
c/o Karen Wirt, Chair
234 E St., NE
Washington DC 20002

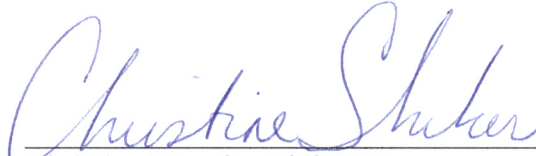
Via Hand Delivery

Square 752 Residents
c/o Drury Tallant
732 3rd Street, NE
Washington, DC 20002

Via Hand Delivery

Stanton Park Neighborhood Association
c/o Monte Edwards
330 E Street, NE
Washington, DC 20002

Via Hand Delivery


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