



Pillsbury Winthrop Shaw Pittman LLP  
2300 N Street, NW | Washington, DC 20037-1122 | tel 202.663.8000 | fax 202.663.8007

Allison C. Prince  
Phone: 202.663.8853  
allison.prince@pillsburylaw.com

June 9, 2009

Mr. Anthony Hood  
Chairman  
District of Columbia Zoning Commission  
441 4th Street, N.W.  
Second Floor  
Washington, D.C. 20001

2009 JUN -9 PM 2:25

#06-02A

**Re: Motion for Extension of Time; Zoning Commission Order No. 06-02 –  
4136 Georgia Avenue, N.W. (Lots 40 and 809, Square 2910)**

Dear Chairman Hood and Members of the Zoning Commission:

On behalf of Petworth Holdings, L.L.C. (“**Applicant**”), the owner of Lots 40 and 809 in Square 2910 (the “**Property**”) in the District of Columbia, we hereby request a two (2) year extension or, in the alternative, the maximum extension the Zoning Commission sees fit, of Zoning Commission Order No. 06-02. This request for an extension is made pursuant to 11 DCMR Sections 2408.10 et. seq and 3001.5. for the good cause shown herein. Enclosed please find the requisite filing fee for this request of \$400.00 in a check made payable to the D.C. Treasurer.

I. Overview of the PUD

ZONING COMMISSION  
District of Columbia

CASE NO. 06-02A  
EXHIBIT NO. 1  
ZONING COMMISSION  
District of Columbia  
CASE NO. 06-02A  
EXHIBIT NO.1

A. The Property

The property that is the subject of this application is presently the site of a Shell gas station. It is located along the south side of Upshur Street, N.W., between Georgia Avenue, N.W., and Kansas Avenue, N.W. The Property is comprised of approximately 13,648 square feet of land area.

B. PUD Approval

On May 14, 2007, in Zoning Commission Case No. 06-02, the Zoning Commission took final action to approve a Planned Unit Development (“**PUD**”) and Zoning Map Amendment from the C-2-A Zone District to the C-2-B Zone District for the Property. Zoning Commission Order No. 06-02 was published in the D.C. Register on September 14, 2007.

The PUD approval was for the construction of a building containing approximately 57 residential condominium units, comprising approximately 42,715 square feet, including four (4) affordable units, ground floor retail space comprising approximately 4,884 square feet, and common space comprising approximately 10,396 square feet (the “**Project**”). The total gross floor area included in the proposed PUD will be approximately 57,995 square feet.

Mr. Anthony Hood  
D.C. Zoning Commission  
June 9, 2009  
Page 3

The PUD Order approved a height of 75 feet, a floor area ratio (“**FAR**”) of 4.25, a lot occupancy of 63%, and approximately 37 parking spaces (two above-grade and 35 below grade). Due to the Property’s size of 13,648 square feet, the Applicant was granted a waiver from 11 DCMR Section 2401.2. A copy of Zoning Commission Order No. 06-02 is attached as Exhibit A.

II. Jurisdiction and Standard of Decision of the Zoning Commission

The Zoning Commission is permitted to extend its Orders under Sections 2408.10 and 3001.5. While the Commission typically extends its Orders for a period of two (2) years, Sections 2408.10 and 3001.5 do not limit such extensions to two (2) years. Instead, the Zoning Commission is authorized to extend its Orders for durations it determines necessary. Therefore, the Applicant requests a two (2) year extension to its Order, or a longer extension, if deemed appropriate by the Zoning Commission.

In order to extend a Zoning Commission Order, under 11 DCMR Section 2408.10, the Zoning Commission must determine that: (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 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 that there is good cause for such extension. In the instant case, this extension request is being served simultaneously on all parties to the original application for Zoning Commission Case No. 06-02. In addition, there has been no substantial change in any of the material facts relating to the case. Therefore, the first two determinations for an extension to Zoning Commission Order No. 06-02 can be made without controversy.

Under the third prong of Section 2408.10, in order to determine whether a PUD should be extended, the Commission must determine whether there is "good cause shown." In 11 DCMR Section 2408.11, the Zoning Regulations describe such good cause as the following:

For purposes of Paragraph 2408.10(c), an extension of the validity of a planned unit development may be granted by the Zoning Commission for good cause shown if an applicant has demonstrated with substantial evidence one or more of the following criteria:

- (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, circumstance 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.

[Emphasis added.]

In granting past extensions, the Zoning Commission has determined that adverse market conditions and an applicant's efforts to market the PUD in spite of these conditions, constitute good cause. In this case, the dismal state of the real estate market throughout the District of Columbia, and particularly on the Georgia Avenue corridor, and the Applicant's efforts to proceed with the Project have been squarely within the standards set out in the Zoning Regulations. More detail regarding the satisfaction of the third prong of these standards is provided below.

Further, under Section 3001.5 of the Zoning Regulations, the Commission is permitted to extend the period of time prescribed within which a building permit application must be filed. Section 3001.5 states: "Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the

Mr. Anthony Hood  
D.C. Zoning Commission  
June 9, 2009  
Page 6

Commission may, for good cause, extend or reduce the time fixed or the period of time prescribed.” Such good cause has been described throughout this letter. Therefore, the Applicant satisfies the extension provisions of Sections 2408.10 and 3001.5 of the Zoning Regulations.

III. Rationale for Extension of Zoning Commission Order No. 06-02

A. Actions Subsequent to Issuance of Z.C. Order No. 06-02

Shortly after the issuance of Zoning Commission Order No. 06-02 in September 2007, the real estate market began to shift course. As has been well documented, over the last two (2) years, the national and local real estate markets have significantly deteriorated and projects have been unable to obtain financing. The result has been that countless projects, both residential and commercial, have not gone forward and many projects that were underway have been abandoned. Projects simply do not have money to fund the creation and submission of their building permit plans. Obviously, these external market conditions are out of the Applicant's control.

The Applicant is owned by the John C. Formant Real Estate Company (the “Company”). The Company has constructed or renovated eleven condominium projects in the Petworth neighborhood surrounding the Property. As a result, the Applicant has

Mr. Anthony Hood  
D.C. Zoning Commission  
June 9, 2009  
Page 7

first-hand knowledge about market conditions in the vicinity of the Property. Despite such knowledge of an unfavorable market, the Applicant has acted diligently, prudently, and in good faith within the market place to effectuate Zoning Commission Order No. 06-02. After the issuance of the Order, the Applicant approached numerous financing sources necessary for the site remediation and building construction necessary for the Project. Unfortunately, financing for a building of the type approved by the Commission in the instant case has not been available.

Therefore, given the well-publicized existing economics of the real estate industry, particularly the current residential condominium market, developing a PUD of this nature has not been viable. The Applicant believes that once market conditions improve, the project will have the potential to proceed. Clearly, the Applicant needs additional time for the market and surrounding neighborhood to strengthen and believes that a time extension longer than two (2) years is necessary. Therefore, the third standard for an extension to a Zoning Commission Order has been satisfied in the instant case.

B. Conformance to the Comprehensive Plan and the Zoning Regulations

This request for an extension of time within which to complete the Project is consistent with the intent and purposes of the Zoning Regulations, the requirements of

Mr. Anthony Hood  
D.C. Zoning Commission  
June 9, 2009  
Page 8

Chapter 24 of the Zoning Regulations, the PUD process and the District of Columbia Comprehensive Plan (“**Plan**”) for the National Capital. The Land Use Map of the Plan designates the site for Low Density Commercial/Moderate Density Residential use. The Plan’s land use designation of the Property has not changed since the PUD was approved. Further, the Plan’s policies and goals still support the Project, and would support an extension of time for Zoning Commission Order No. 06-02.

#### IV. Conclusion

For all of the above reasons constituting good cause, the Applicant requests a two (2) year extension, or a longer extension if deemed appropriate by the Commission, for Zoning Commission Order No. 06-02.

We would be happy to produce any other information or evidence in support of the above letter and greatly appreciate your consideration of this matter. Thank you for your consideration.

Mr. Anthony Hood  
D.C. Zoning Commission  
June 9, 2009  
Page 9

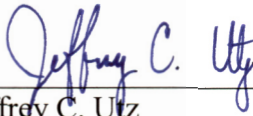
Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN, LLP

Handwritten signature of Allison C. Prince in blue ink, with the initials 'gcu' at the end.

---

Allison C. Prince

Handwritten signature of Jeffrey C. Utz in blue ink.

---

Jeffrey C. Utz

Enclosures

cc: John Formant

Mr. Anthony Hood  
D.C. Zoning Commission  
June 9, 2009  
Page 10

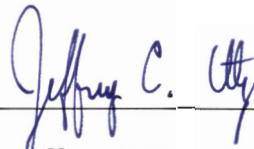
**CERTIFICATE OF SERVICE**

I hereby certify that on this June 9, 2009, I served a copy of the foregoing letter via hand delivery and first class mail, to:

Stephen Mordfin  
Office of Planning  
801 North Capitol Street, N.E.  
4<sup>th</sup> Floor  
Washington, D.C. 20001

ANC 4C (10 copies)  
P.O. Box 60847  
Washington, DC 20039-0847

Shanel Anthony, SMD 4C07  
4409 Kansas Ave NW  
Washington, DC 20011



---

Jeffrey C. Utz, Esq.  
Pillsbury Winthrop Shaw Pittman, LLP  
2300 N Street, N.W.  
Washington, D.C. 20037