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July 22, 2009

VIA HAND DELIVERY

Chairman Anthony Hood
D.C. Zoning Commission
441 4th Street, N.W.
Second Floor
Washington, DC 20001

**Re: Z.C. Case No. 06-02A – Extension Request for Consolidated
Planned Unit Development Application by Petworth Holdings,
L.L.C. – 4136 Georgia Avenue, N.W. (Lots 40 and 809, Square
2910)**

Dear Chairman Hood and Members of the Commission:

On behalf of Petworth Holdings, L.L.C., the applicant in the above-mentioned case, enclosed please find the applicant's Proposed Findings of Fact and Conclusions of Law. If you have any questions or concerns, please feel free to contact either of the undersigned.

Sincerely yours,

Jeffrey C. Utz

cc: John Formant (by email PDF)
Allison Prince, Esq. (by email PDF)

RECEIVED
JUL 23 2009
CASE NO. 06-02A
EXHIBIT NO. 5

ZONING COMMISSION
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District of Columbia
CASE NO. 06-02A
EXHIBIT NO. 5

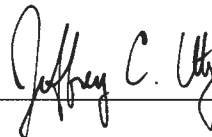
CERTIFICATE OF SERVICE

I hereby certify that on this July 22, 2009, I served a copy of the foregoing Proposed Findings of Fact and Conclusions of Law via hand delivery, to:

Stephen Mordfin
Office of Planning
2000 14th Street, N.W.
Washington, D.C. 20009

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

Shanel Anthony, SMD 4C07
4409 Kansas Ave N.W.
Washington, D.C. 20011



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**APPLICANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF
LAW**

**ZONING COMMISSION ORDER NO. 06-02A
Case No. 06-02A**

**Time Extension – Consolidated Review and Approval of a Planned Unit
Development Located at 4136 Georgia Avenue, N.W.
(Lots 40 and 809, Square 2910)
Petworth Holdings, L.L.C.**

July 13, 2009

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the “**Commission**”) was held on July 13, 2009. At the meeting, the Commission approved the request of Petworth Holdings, L.L.C. (“**Applicant**”) for a time extension of the Consolidated Review and Approval of a Planned Unit Development (“**PUD**”) for Lots 40 and 809, Square 2910, located at 4136 Georgia Avenue, N.W. (“**Property**”). The request was made pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations. The Commission determined that this request was properly before it under the provisions of Section 2408.10 of the Zoning Regulations.

FINDINGS OF FACT

1. By Zoning Commission Order No. 06-02, effective September 14, 2007, the Commission approved the proposed PUD and a Zoning Map Amendment from the C-2-A Zone District to the C-2-B Zone District for the Property. The approved PUD is for a residential and retail building comprised of approximately 57,995 square feet, approximately 57 residential condominium units, and a floor area ratio of 4.25. The Commission approved a maximum building height of 75 feet, a lot occupancy of 63%, and approximately 37 parking spaces (two above-grade and 35 below grade).
2. On June 9, 2009, prior to the expiration of the PUD, the Applicant filed a request to extend the validity of the PUD approval for a period of two years. The request stated, in relevant part, that the extension was necessary because of the dire economic conditions in the real estate market, particularly in the Petworth neighborhood surrounding the Property. Due to such widespread economic hardships, the Applicant experienced difficulty obtaining financing for the Project

despite the Applicant's good faith attempts to do so. The extension request noted that such economic situation is outside of the Applicant's control.

3. Advisory Neighborhood Commission ("ANC") 4C, the ANC within which the Property is located, was automatically a party in the instant case, as well as the original PUD case, Case No. 06-02. Accordingly, the Applicant served the ANC a copy of the extension request and provided at least thirty (30) days for them to respond. No responses were received.
4. At its regularly scheduled public meeting on July 13, 2009, the Commission reviewed and approved the two-year time extension. The Commission found that there was good cause for the extension and that all parties to the PUD case had been served.

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 thirty (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 that there is good cause for the extension based on the criteria established in Section 2408.11. (11 DCMR Section 2408.10.) The three criteria under Section 2408.11 are: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's 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 Section 2408.11.)

The Commission concludes the Applicant complied with the notice requirements of 11 DCMR Section 2408.10(a) by serving all parties with a copy of the Application and allowing them thirty (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 Section 2408.11(a).

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 PUD approval in Z.C. Case No. 06-02, Z.C. Order No. 06-02A.

The final PUD approved by the Commission shall be valid until September 17, 2011, within which time an application shall be filed with the District for a building permit unless this Order is further extended by the Commission.

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 Section 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, familial status, family responsibilities, matriculation, political affiliation, 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 July 13, 2009, the Zoning Commission **APPROVED** this Application at its public meeting by a vote of 4-0-1 (Anthony J. Hood, William W. Keating, III, Konrad Schlater, Michael G. Turnbull to approve; Peter G. May not present, not voting).

In accordance with the provisions of 11 DCMR Section 3028.8, this Order shall become final and effective upon publication in the DC Register on _____.

ANTHONY HOOD
Chairman
Zoning Commission

Director
Office of Zoning