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ZONING COMMISSION
District of Columbia

CASE NO.

EXHIBIT NO.

ZONING COMMISSION
District of Columbia
CASE NO.06-02A
EXHIBIT NO.7

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-02A
Z.C Case No. 06-02A
(Petworth Holdings, L.L.C. – Two-Year PUD Time Extension @
Lots 40 and 809, Square 2910)
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 § 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 related 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 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 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 § 2408.11. (11 DCMR § 2408.10.) The three criteria under § 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 § 2408.11.)

The Commission concludes the Applicant 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 that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 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 14, 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 the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”). This Order is conditioned upon full compliance with those provisions. In accordance with the 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 prohibited by the Act. In addition, harassment based on any of the above protected categories is 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 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, upon the motion of Chairman Hood, as seconded by Commissioner Schlater, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of 4-0-1 (Anthony J. Hood, William W. Keating, III, and Konrad W. Schlater to approve; Michael G. Turnbull to approve by absentee ballot; Peter G. May, 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 *DC Register* on March 19, 2010.