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January 24, 2008

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Anthony Hood, Chairperson
District of Columbia Zoning Commission
Office of Zoning
441 4th Street, NW, Room 210
Washington, DC 20001

Re: **Clemens 4600 Partners, LLC (the "Applicant")**
Approval of Extension of Time
Zoning Commission Case No. 03-27A
Proposed Findings of Fact and Conclusions of Law

Dear Chairperson Hood and Members of the Commission:

Enclosed please find twenty copies of the Applicant's Proposed Findings of Fact and Conclusions of Law for the above-captioned application. Please feel free to contact me with any questions.

Best regards,

Kate Myers
Associate

Enclosure

ZONING COMMISSION
District of Columbia
CASE NO. 03-27A
EXHIBIT NO. 5
ZONING COMMISSION
District of Columbia
CASE NO. 03-27A
EXHIBIT NO. 5

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DRAFT ORDER
ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 03-27A
Z.C. CASE No. 03-27A
Time Extension – Consolidated Planned Unit Development
(Clemens 4600 Partners, LLC)
January __, 2008

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on January 14, 2008. At the meeting, the Zoning Commission approved a request from Clemens 4600 Partners, LLC (the "Applicant") for a time extension for an approved planned unit development ("PUD") for Lots 817 and 818 in Square 1732, located at the intersection of Wisconsin Avenue and Brandywine Street, N.W. ("Property") pursuant to the District of Columbia Zoning Regulations. The Commission determined that this modification request was properly before it under the provisions of § 2408.10 of the Zoning Regulations.

FINDINGS OF FACT

By Zoning Commission Order No. 03-27, effective November 18, 2005, the Commission approved a consolidated PUD for the Property. The approved PUD is for a mixed-use, primarily residential, project that includes 42 residential units occupying approximately 36,333 square feet of gross floor area and ground-floor retail along Wisconsin Avenue, consisting of approximately 1,650 square feet of gross floor area. The approved density is 3.0 FAR, a building height of 65 feet, a lot occupancy of 60 percent, approximately 49 parking spaces, and one affordable housing unit.

The Applicant's two-year time extension request for additional time to obtain project financing is the result of changes in the residential condominium market, the prediction that housing values will continue to decline and the increases in the lack of willingness on the part of lenders to finance speculative condominium projects. The Applicant initially pre-sold some of the residential units. However, those deals were withdrawn when the condominium market softened, contributing to the Applicant's difficulty in obtaining financing. Conversion of the building to rental apartments is an option, but in this case the Applicant indicates that the building does not have sufficient density to be financed as such.

By report dated November 23, 2007, the Office of Planning ("OP") recommended approval of the two-year extension request. OP concludes that the request for a time extension is in conformance with the provisions of § 2408.10 of the Zoning Regulations, specifically that (a) the request was served on all parties, who were provided at least thirty (30) days in which to comment and (b) that there has been "no substantial change in any of the material facts upon which the Zoning Commission based its original approval . . ."

OP also concurred with the Applicant's statement of "good cause" under § 2408.11(c), namely, the Applicant's inability to obtain sufficient project financing for the PUD due to changes in the economic and market conditions beyond the Applicant's reasonable control; the Applicant's inability to secure all governmental agency approvals prior to the PUD expiration date beyond the Applicant's control; and conditions and factors beyond the Applicant's control that rendered the Applicant unable to comply with the time limits in the PUD Order. Finally, OP concluded that the request is consistent with the Comprehensive Plan.

The Applicant's submission was served on Advisory Neighborhood Commissions ("ANC") 3E and 3F. Neither ANC submitted a report. There was no opposition to the requested time extension.

On January 14, 2008, at its regular monthly meeting, the Commission reviewed and granted approval for the two-year time extension. The Commission concurs with the Applicant that approving the modification is appropriate and not inconsistent with the intent of 11 DCMR §§ 2408.10, 2408.11, and 3030.

The Commission further 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 and Zoning Act.

CONCLUSIONS OF LAW

Upon consideration of the record in this application, the Commission finds the proposed time extension is justified by the uncertainty of condominium market conditions in the Washington DC region and consistent with the intent of the previously approved Zoning Commission Order No. 03-27. Further, 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 approved PUD in Zoning Commission Case No. 03-27, Order No. 03-27.

The final PUD approved by the Commission shall be valid until November 18, 2009, within which time an application shall be filed for a building permit, as specified in § 2409.1. Construction shall start no later than November 18, 2010.

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, 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 the burden, it is hereby **ORDERED** that the application be **GRANTED**.

On January 14, 2008, the Zoning Commission approved this application at its public meeting by a vote of 5-0-0 (Gregory N. Jeffries, Peter G. May, Anthony Hood, Curtis Etherly, Jr., and Michael G. Turnbull to approve).

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

ANTHONY HOOD
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2008 a copy of the Draft Findings of Fact and Conclusions of Law, Draft Order No. 03-27A, was served by hand and/or by U.S. Mail on the following:

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Building and Land Regulation Administration
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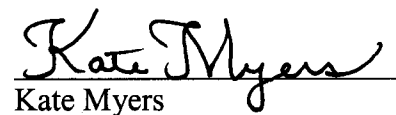
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