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June 13, 2008

HAND DELIVERY

District of Columbia Zoning Commission
441 4th Street, NW
Second Floor
Washington, DC 20001

05-30A

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D.C. OFFICE OF ZONING
JUL 23 PM 3:09

Re: Request for Extension of Time, Zoning Commission Order No. 05-30 (Consolidated Planned Unit Development – 6000 New Hampshire Avenue, N.E.)

Dear Members of the Zoning Commission:

On behalf of the Applicant in the above-referenced planned unit development ("PUD"), this letter serves as a request for a two (2) year extension of Zoning Commission Order No. 05-30 such that an application must be filed for a building permit for the PUD no later than January 19, 2011 and construction must start no later than January 19, 2012. This request is filed pursuant to §2408.10 of the Zoning Regulations for good cause shown herein. A copy of Order No. 05-30 is attached as Exhibit A. 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 July 14, 2008 public meeting.

I. INTRODUCTION

A. Factual Background

By Order No. 05-30, the Zoning Commission approved a PUD on the subject property, which consists of Parcels 126/24 and 126/74, and Lots 69, 70, 71, 72, 73, 801, 824, and 826 in Square 3714, and Lot 858 in Square 3719, and contains approximately 505,062 square feet of land area. The Subject Property is currently improved with two buildings that previously housed the Masonic and Eastern Star Nursing Home and Infirmary, but were most recently used as offices for Med-Star Health. The Applicant intends to convert these structures into condominium apartment buildings.

ZONING COMMISSION
District of Columbia

CASE NO. 05-30A

The approved PUD includes construction of a residential development of 169 units—including 38 detached single-family dwellings, 73 townhomes, and 58 condominium apartments—containing approximately 369,684 square feet of gross floor area. Moreover, the project will include 14 units (3 townhomes and 11 condominiums) offered as affordable housing units. The affordable apartment units will be distributed vertically and horizontally throughout the two apartment buildings. The three affordable townhouse units will be units randomly distributed with not more than one per group of town houses. The project will have an overall FAR of 0.73 and a maximum building height of approximately 40 feet for the townhouses and single family homes.

The project also includes a number of well-designed green spaces to complement the low-density residential character of the surrounding neighborhood. These landscaped areas include a centrally located "great lawn," encompassing approximately 23,580 square feet of open space, as well as a number of smaller parks and gardens. The project includes a total of over 186,000 square feet of green space within the development.

Since issuance of Order No. 05-30, the Applicant has recorded the required PUD Covenant in the land records of the District of Columbia, and has also filed a subdivision application for the subject property. However, as discussed in more detail below, the Applicant is requesting this 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 materials 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.

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 Applicant has served this request for extension of time on all parties to the initial PUD application, allowing them the required time period to respond, as evidenced by the Certificate of Service attached hereto.

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. Furthermore, §2408.11(c) allows for extensions based upon "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." The instant Application satisfies these criterion and thus deserves extension of the validity of the PUD for two reasons.

First, subsequent to the Commission's approval of the PUD, a lawsuit was initiated against the Applicant regarding the purchase, development and sale of the subject property. Thus, the Applicant was unexpectedly required to suspend all development work pending resolution of the litigation, which was just recently settled in November, 2007. Thus, the Applicant has had a substantially reduced amount of time to effectively seek financing for the project. Second, although the litigation has settled, the current residential market has rendered it difficult for the Applicant to obtain sufficient financing for the project, despite the Applicant's good faith efforts. The recent changes in the economy and residential housing market conditions, combined with predictions that housing values will continue to decline, has resulted in a lack of willingness on the part of lenders to finance the project. To date, and once the litigation settled, the Applicant has been faced with the following impediments in attempting to obtain financing for the project:

- a. In June of 2006, Four Points, LLC entered into a joint-investment agreement with a prominent, DC-based, investment fund that committed to provide up to \$50 million of equity to build moderately priced residential communities in the District. This project was included in that venture. In the fall of 2007, the investment partner made the decision to stop all funding requests for new

residential projects until market conditions improved. Recent efforts to find a replacement equity partner have been unsuccessful.

- b. In May of 2008, the lender on the project refused to grant any further extensions on the land loan. That loan, when expired in June, will have to be replaced with another source of funds. As the value of the underlying property has decreased over the last 18 months, all banks considering replacing the original lender are willing to provide less debt. The difference must be made up by the owners. That additional equity requirement means that the owner/developer must spend the monies previously allocated for land development to cover the difference between the new loan and the original loan. As such, the owner is delayed until the market stabilizes before it is able to raise the necessary funding to begin the project. We believe that the requested extension will be sufficient to allow such stabilization to occur.

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 favorable financing for the project. Indeed, the Applicant is involved in ongoing discussions with multiple sources to capitalize this project. Moreover, there has not been any change in any of the material facts upon which the Zoning Commission based its original approval of the 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 PUD approval.

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. The only other parties to this application were Advisory Neighborhood Commission ("ANC") 4B and the Citizens Aware Block Organization, and the Applicant has served a copy of this request on

both parties. There is no dispute to the facts that: (1) the subject property has been subject to litigation, (2) the inability of the Applicant to secure financing for the project, or (3) that there are significant impediments in the market place to proceeding with a residential project at this time. Moreover, the Applicant has had multiple communications with neighbors of the subject property, and has indicated the Applicant's desire to complete both the horizontal and vertical development at one time, as opposed to only being able to fund one portion of construction and having to wait an unspecified amount of time to secure funding in order to proceed with the project. Thus, Applicant's request for an extension of the Order is in the best interest of the community environmentally and aesthetically for the site to remain as-is until funding to complete the entire project can be secured in an effort to minimize the duration and impact of extended construction in the neighborhood.

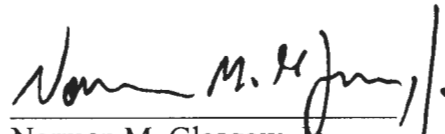
IV. CONCLUSION

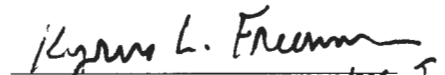
In light of this demonstration of good cause and for the reasons stated herein, the Applicant respectfully requests that the Commission approve a two (2) year extension of the approved PUD, such that an application must be filed for a building permit no later than January 19, 2011 and construction must start no later than January 19, 2012. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By:


Norman M. Glasgow, Jr.


Kyrus L. Freeman *NMG, Jr.*

Attachments

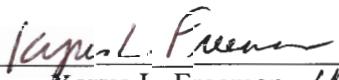
CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2008, a copy of the Applicant's Request for Extension of Time, Zoning Commission Order No. 05-30 (Consolidated Planned Unit Development – 6000 New Hampshire Avenue, N.E.), was served via hand delivery on the following:

Advisory Neighborhood Commission 4B
6856 Eastern Avenue, N.W., #314
Washington, DC 20012

Citizens Aware Block Organization
Attn: Yvonne A. Jefferson
6009 New Hampshire Avenue, N.E.
Washington, D.C. 20011

Jennifer Steingasser
D.C. Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002


Kyrus L. Freeman JMC Jr