

ZONING COMMISSION
District of Columbia
CASE NO. 06-08D
EXHIBIT NO. 15

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-08D
Z.C. Case No. 06-08D
Fort Lincoln/Gateway Village, LLC
(Minor Modification of an Approved Consolidated Planned Unit Development
@ Square 4325)
February 9, 2015

This Order pertains to a request by Fort Lincoln/Gateway Village, LLC (“Applicant”). The Applicant seeks approval of a modification to an approved planned unit development (“PUD”) for the property known as Parcel 173/145 in Square 4325 (“Property”). The original PUD order was approved in Z.C. Case No. 06-08, which became effective on November 23, 2007. The original PUD order was previously modified through the following: a minor modification approved in Z.C. Case No. 06-08A, which became effective on May 16, 2008; a modification and time extension request approved in Z.C. Case No. 06-08B, which became effective on April 30, 2010; and a modification request in Z.C. Case No. 06-08C, which became effective on October 12, 2012.

The Zoning Commission for the District of Columbia (“Commission”) first considered the application at a public meeting held June 10, 2013 and considered an amended version of the application at its public meeting held February 9, 2015, at which time it approved the request.

FINDINGS OF FACT

1. The original PUD application, Z.C. Case No. 06-08, approved a 357-unit townhouse and townhouse condominium development consisting of three sizes of single-family townhouses (16-foot, 20-foot, and 24-foot-wide models) and “2 over 2” townhouse condominiums on approximately 23 acres of vacant land in Ward 5 and in the Fort Lincoln Urban Renewal Plan Area. The site plan approved in the original PUD application included a tot lot, a Mews Green, and a central Community Green that consisted of 1.18 acres of open space intended for non-organized, passive, and active recreational use. The original PUD application also required that 30 workforce affordable housing units be targeted for sale to District of Columbia Public School (“DCPS”) employees. Z.C. Order No. 06-08 became effective on November 23, 2007.
2. On November 19, 2007, the Commission approved the Applicant’s minor modification application (Z.C. Case No. 06-08A), which authorized the following changes to the approved plans:
 - Changes to the footprints of the various unit sizes;
 - Flexibility to provide a “loft” option in the 16-foot, 20-foot, and 24-foot-wide townhomes;
 - Flexibility for the interior 24-foot-wide units to have the option of a detached garage, or a larger rear yard and a parking pad instead of the detached garage;

- Flexibility for the 20-foot-wide units to have the option to convert the interior parking garage to living space;
 - An increase to the maximum height of the 16-foot-wide units from 43 to 47 feet, an increase to the maximum height of the 20-foot-wide units from 42 to 47 feet, and an increase to the maximum height of the 24-foot-wide units from 40 to 42 feet; and
 - A modification to the overall site plan to include differing townhome widths in the various strings of townhomes throughout the site. The minor modification application did not request any change in the approved PUD's: amenities package (including the amount of workforce housing); lot configuration; Low-Impact Development ("LID") components; Community Green and Mews Green; tot lot; or the total number of residential units. Z.C. Order No. 06-08A became effective on May 16, 2008.
3. On April 30, 2010, the Commission approved a modification of the approved PUD and an extension of the period of approval of the original PUD project in Z.C. Case No. 06-08B. The Commission approved the following modifications to the project:
- A reduction in the total number of residential units from 357 units to 334 units;
 - A return to the original PUD's design scheme of having consistent townhouse widths in each string of townhouses;
 - An increase in the amount of overall greenspace included in the project; and
 - A three-phase development timeline and an extension of the time period of PUD approval with the requirement that a building permit application for the first phase of development be filed within one year from April 30, 2010, and that construction commence on the first phase of development within two years from April 30, 2010.
4. On September 10, 2012, the Commission approved a modification of the approved PUD in Z.C. Case No. 06-08C. The Commission approved the following modifications to the project:
- A modification to Condition No. 3 of Z.C. Order No. 06-08 to allow the workforce affordable housing units to be made available to the general public, and not limited to only DCPS employees;

- Flexibility to satisfy the 30 workforce affordable housing unit requirement with the 16-foot townhome model (with less than 50% of the individual townhomes in a stick of 16-foot townhomes dedicated as workforce affordable units), or with either of the “2 over 2” condominium unit models (the two-story, three-bedroom, and two-and-one-half bathroom unit; or the one-story, two-bedroom, and two-bathroom unit);
 - Flexibility to replace some or all of the “2 over 2” condominium units approved for Phases II and III with the approved 16-foot and 24/22-foot townhome types; and
 - Providing the 10-year period of affordability commences on the date that each unit is first sold, rather than the date the Certificate of Occupancy for the building is issued.
5. On May 7, 2013, the Applicant submitted an application requesting approval of a modification to Condition No. 2 of Z.C. Order No. 06-08C, pursuant to the consent calendar provisions of the Zoning Regulations, 11 DCMR § 3030. The Applicant noted that Condition No. 2 of Z.C. Order No. 06-08C lists seven separate financial contributions that the Applicant was required to make. The Applicant stated that it had satisfied six of those conditions and is seeking to modify only one contribution. The financial requirement of Condition No. 2 of Z.C. Order No. 06-08C which the Applicant desired to modify currently reads as follows:
- Renovation and Upgrade of the Theodore Hagans Cultural Center – The Applicant will make a financial contribution of \$25,000 for the renovation of space within the Theodore Hagans Cultural Center located within the Fort Lincoln community. These funds will be used to purchase and install exercise equipment, patio furniture and furnishings, and Hi-Definition televisions for the cultural center.
6. The Applicant stated that DCPS had recently decided to close the Thurgood Marshall School. Discussions within the Fort Lincoln community, the District of Columbia Council, and the Gray Administration raised the possibility of turning the Thurgood Marshall School facilities (which include an indoor Olympic-sized swimming pool) into a community center. The Applicant stated that the existing Theodore Hagans Cultural Center (“Hagans Center”) is smaller and less accessible than the Thurgood Marshall School. In addition, the Hagans Center is so lightly used at this point that the DC Department of Parks and Recreation (“DPR”) has reduced staffing and terminated evening use of the facility. As a result, the sentiment in the Fort Lincoln community (echoed by the Ward 5 Councilmember) was that the financial contribution for renovation and upgrade of the Hagans Center would be better used to help further the creation of a

Thurgood Marshall Community Center, located within the existing Thurgood Marshall School facilities.

7. For these reasons, the Applicant requested that the \$25,000 financial contribution required to be made for renovations and upgrades to the Hagans Center should instead be used to help turn the Thurgood Marshall School facilities into the Thurgood Marshall Community Center. In addition, the Applicant requested that the time period in which this financial contribution is required to be made be extended to April 23, 2015. (Exhibit ["Ex."] 1.)
8. In a report dated May 31, 2013, the Office of Planning ("OP") indicated support for the Applicant's time extension request for the \$25,000 contribution, but requested additional information from the Applicant regarding the exact use of the funds in the new community center. (Ex. 6.)
9. At a properly noticed public meeting on June 10, 2013, the Commission requested that the Applicant provide more specific information as to what the \$25,000 would be used for at the Thurgood Marshall Community Center and left the record open for the Applicant to provide this information.
10. In a letter dated October 9, 2013, the Applicant stated that representatives of the Young Men's Christian Association ("YMCA"), DCPS, and the City Administrator were engaged in ongoing discussions regarding the Thurgood Marshall Recreation Center. Accordingly, the Applicant requested that it have until November 27, 2013, to provide detailed information concerning the use the required \$25,000 contribution. (Ex. 8.) The Commission granted this request.
11. In a letter dated November 26, 2013, the Applicant noted that it needed additional time to provide the information and requested that it have until March 31, 2014, to provide that additional information. (Ex. 9.) The Commission granted this request.
12. In a letter dated April 8, 2014, the Applicant again requested additional time, proposing a deadline of June 30, 2014, to provide that additional information. (Ex. 10.) The Commission granted that request.
13. In a letter dated June 25, 2014, the Applicant stated that it had been working with the DC Department of General Services ("DGS") to find appropriate users for the Thurgood Marshall Community Center. The Applicant noted that the YMCA had a plan, which was approved by DGS, for using a major part of the Community Center for their programs and services. The Applicant also noted that in order for DGS to commence renovation work, DGS determined that they also needed a District agency to commit to using space in the future community center along with the YMCA. The DC Office of

Aging had shown interest in taking such space, as it would be an ideal partner for the YMCA, given the large number of seniors in the Fort Lincoln neighborhood. The Applicant contended that this information provided a sufficient basis for the Commission to approve the requested modification. (Ex. 11.)

14. In a report dated July 7, 2014, OP stated that, because the Applicant had not provided details in its June 25, 2014 submission regarding what the \$25,000 contribution would be used for, OP did not support the minor modification request. (Ex. 12.)
15. By letter dated July 16, 2014, the Applicant stated that nothing was to be gained by denying this application at this time, nor was anything gained by having the Applicant make a financial contribution to a recreation center that is not heavily used. Therefore, the Applicant requested that it be given until January 31, 2015, to provide more detail as to what the \$25,000 contribution would provide at the new Thurgood Marshall Community Center and identify an enforcement mechanism to assure that the public benefit will be delivered. The Applicant also stated that OP was amenable to the requested time extension. (Ex. 13.) At a properly noticed public meeting on July 17, 2014, the Commission approved this request.
16. In a letter dated January 30, 2015, the Applicant noted that despite the best efforts of the Applicant and DGS, the Applicant believed that it will likely be some time before the Thurgood Marshall Community Center is operational. Thus, the Applicant re-engaged with DPR representatives of the Hagans Center to create a list of needs that could be fulfilled with the \$25,000 contribution from the Applicant. The Applicant provided a detailed list of the exercise and recreation equipment, tables and chairs, stage equipment, and greenhouse repairs that the Applicant and DPR intend to be purchased for use at the Hagans Center in satisfaction of Condition No. 2 of Z.C. Order No. 06-08. The Applicant agreed to purchase all of this equipment or services and deliver such equipment or services to the Hagans Center by April 23, 2015. (Ex. 14.)
17. No other District agencies participated in this application,
18. By letter dated June 4, 2013, Advisory Neighborhood Commissioner (“ANC”) 5C03, Robert King, the Single-Member District Commissioner for this property, noted his support for the application. (Ex. 7.)

CONCLUSIONS OF LAW

Upon consideration of the record of this application, the Commission concludes that the Applicant’s purchase of the exercise and recreation equipment, tables and chairs, stage equipment, and provision of greenhouse repairs at the Hagans Center satisfy the relevant terms and intent of the portion of Condition No. 2 of Z.C. Order No. 06-08, which address the

renovation and upgrade of the Hagans Center. The Commission concludes that the proposed modifications are in the best interest of the District of Columbia and are consistent with the intent and purpose of the Zoning Regulations and Zoning Act. The approval of the modification application is not inconsistent with the Comprehensive Plan.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give “great weight” to OP’s recommendations. The Commission finds that the final list of goods and services to be provided by the Applicant includes sufficient detail, as requested by OP, regarding the use of the \$25,000 for the renovation and upgrade of the Hagans Center. The Commission also notes OP’s support for the Applicant’s request for a time extension for payment of the \$25,000 contribution to April 23, 2015.

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (DC Law 1-21, D.C. Official Code § 1-309.10(d)), to give “great weight” to the issues and concerns of the affected ANC. The Commission notes that, in this case, there was no official position from the ANC regarding this application.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of this application for a modification of the approved PUD project in Z.C. Order Nos. 06-08, 06-08A, 06-08B, and 06-08C. The Zoning Commission hereby modifies the eighth paragraph of Condition No. 2 to read as follows:

Renovation and Upgrade of the Theodore Hagans Cultural Center – The Applicant will make a financial contribution of \$25,000 for the renovation of space within the Theodore Hagans Cultural Center located within the Fort Lincoln community. These funds will be used to purchase exercise and recreation equipment, tables and chairs, stage equipment, and provide green house repairs. The purchase of this equipment and services, and delivery of such equipment or services shall be made by April 23, 2015.

On February 9, 2015, upon the motion of Chairman Hood, as seconded by Vice-Chairperson Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.29, this Order shall become final and effective upon publication in the *D.C. Register* on September 4, 2015.