

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 14-02A  
Z.C. CASE NO. 14-02A  
Preservation of Affordable Housing, Inc., *et als.*  
(Two-Year Extension of Time for a First-Stage PUD and Related Map Amendment  
@ Various Lots in Squares 5862, 5865, 5866, and 5867)  
June 12, 2017**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on June 12, 2017. At the meeting, the Commission approved a request from the District of Columbia ("District"), the District of Columbia Housing Authority ("DCHA"), and Preservation of Affordable Housing, Inc. ("POAH") (together, the "Applicant") for a two-year extension of the time period in which to file a second-stage PUD application for four parcels within the first-stage planned unit development ("PUD") approved pursuant to Z.C. Order No. 14-02. The Commission considered the application pursuant to Subtitle Z, Chapter 7 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

**FINDINGS OF FACT**

1. Pursuant to Z.C. Order No. 14-02, dated December 8, 2014, and effective on May 29, 2015, the Commission approved a first-stage PUD and a PUD-related zoning map amendment to rezone Square 5862, Lots 137-143; Square 5865, Lots 243, 249, 254, 259, 260-280, 893, 963-978, and 992; Square 5866, Lots 130, 133-136, 141-144, 147-150, 152, 831-835; and Square 5867, Lots 143, 172-174, 890-891, and 898 (collectively the "PUD Site") from the R-5-A Zone District to the R-5-B and C-2-A Zone Districts.<sup>1</sup>
2. Condition No. E(1) of Z.C. Order No. 14-02 required the Applicant to file a second-stage application for at least four parcels within the PUD Site within two years of the effective date of Z.C. Order No. 14-02 (i.e., by May 29, 2017). These first four parcels were described as Phase I of the development. The condition also provided specific deadlines for filing second-stage applications for what it described as Phases III and IV of the

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<sup>1</sup> Z.C. Order No. 14-02 was approved under the 1958 Zoning Regulations. Under the 2016 Zoning Regulations, which repealed and replaced the 1958 Zoning Regulations on September 6, 2016, the R-5-A Zone District was re-designated to the RA-1 zone, the R-5-B Zone District was re-designated to the RA-2 zone, and the C-2-A Zone District was re-designated to the MU-4 zone.

development. Lastly, the condition established an overall expiration date for the first-stage PUD as being 10 years from the effective date of the order (i.e., May 29, 2025).

3. On April 24, 2017, the Applicant filed a request for a two-year extension of this approved time period, such that a second-stage application for at least four parcels within the first-stage PUD must be filed no later than May 29, 2019. This was the first extension request made by the Applicant.
4. The Applicant submitted evidence showing the existence of pending litigation that rendered the Applicant unable to comply with the time limits of Z.C. Order No. 14-02. As demonstrated in the Notice of Appeal submitted by the Applicant, an appeal of Z.C. Order No. 14-02 was filed in the D.C. Court of Appeals on August 31, 2015, regarding development of the PUD Site. (Exhibit ["Ex."] 1B; *See* Case No. 15-AA-1000.) The appeal was filed by the Barry Farm Tenants and Allies Association ("BFTAA"), which participated as a party in opposition in Z.C. Case No. 14-02. As indicated in the court docket for Case No. 15-AA-1000, the oral argument for the appeal was held on September 28, 2016, and additional pleadings were subsequently filed. (Ex. 1C.) However, at the time of filing the extension request, the Court had not yet issued a decision in the appeal. The Applicant indicated that after the Court issues a decision and the Applicant resolves any and all issues identified in that decision, it will be able to move forward with filing a second-stage application. The Applicant also indicated that it anticipates that resolution of the appeal will occur prior to May 29, 2019, such that it will be able to file a second-stage PUD application prior to May 29, 2019.
5. On June 1, 2017, the Office of Planning ("OP") submitted a report recommending approval of the application (Ex. 4).
6. The only other parties to the application were BFTAA and Advisory Neighborhood Commission ("ANC") 8C. As indicated in the Applicant's Certificate of Service (part of Ex. 1), the Applicant served BFTAA and ANC 8C with the PUD extension application. However, neither BFTAA nor ANC 8C submitted a letter in support of or in opposition to the application.
7. Because the Applicant demonstrated good cause with substantial evidence pursuant to Subtitle Z § 705.2(c) of the Zoning Regulations, the Commission finds that the request for the two-year time extension should be granted.

### **CONCLUSIONS OF LAW**

1. Pursuant to 11-Z DCMR § 705.2, 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 to the application by the applicant, 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) The applicant demonstrates with substantial evidence that there is good cause for such extension. 11-Z DCMR § 702.2. Subtitle Z § 702.2(c) provides the following criteria for good cause shown:
    - (1) An inability to obtain sufficient project financing for the 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;
    - (2) An inability to secure all required governmental agency approvals for a development by the expiration date of the order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or
    - (3) 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 order.
2. The Commission concludes that the Applicant complied with the notice requirements of Subtitle Z § 702.2(a) by serving all parties with a copy of the application and allowing them 30 days to respond.
  3. 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.
  4. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) (the "ANC Act") to give great weight to the affected ANC's recommendations. In this case, ANC 8C received notice of the application and was given 30 days to respond, but did not submit a report.<sup>2</sup>
  5. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission has considered the OP's recommendation in support of the application and agrees that approval of the requested two-year time extension is appropriate.

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<sup>2</sup> A time extension request is not the type of action for which notice is required to be given by the ANC Act. Therefore, it is appropriate for the Zoning Commission to require a response from an affected ANC within 30 calendar days, whereas Saturdays, Sundays, and holidays are not counted when ANC notice is required.

6. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by Subtitle Z § 702.2(c). Specifically, the Applicant provided substantial evidence that there is pending litigation over the approved first-stage PUD that needs to be resolved before the Applicant can file a second-stage application for at least four parcels within the PUD Site.
7. Subtitle Z § 705.7 provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in Subtitle Z § 702.2 of the Zoning Regulations.
8. The Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in Subtitle Z § 702.2 of the Zoning Regulations.
9. 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.

### **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 extension of the time period in which the Applicant must file a second-stage PUD application for at least four parcels within the first-stage PUD (i.e. until May 29, 2019). The interim deadlines for filing additional second-stage applications, as set forth in Condition No. E(1)(b) through (c) of Z.C. Order No. 14-02 remain unchanged, as does overall the overall first-stage PUD expiration date of May 29, 2025.


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, gender identify or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic information, 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.


On June 12, 2017, upon the motion of Vice Chairman Miller, as seconded by Commissioner Shapiro, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on August 25, 2017.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

 for  
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**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**