

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



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 14, 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 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 Municipal Regulations (“DCMR”) Title 11 (Zoning). 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 Z.C. 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%, approximately 49 parking spaces, and one affordable housing unit. Advisory Neighborhood Commission (“ANC”) 3E, the ANC in which the Property is located, was automatically a party in the case. The Commission also granted party status to ANC 3F, which is adjacent to the Property. Z. C. Order No. 03-27 expired on November 18, 2007.
2. On November 7, 2007, the Applicant filed an application requesting a two-year extension of the PUD (“Application”). The Application stated, in relevant part, that the extension was necessary because the Applicant was unable to obtain sufficient project financing despite its good faith efforts because of changes in economic and market conditions beyond its control. It stated the request was the result of changes in the residential condominium market, the prediction that housing values would continue to decline, and the lack of willingness on the part of lenders to finance speculative condominium projects. It stated the Applicant

- initially pre-sold some of the residential units but those deals were withdrawn when the condominium market softened, contributing to its difficulty in obtaining financing. It stated that conversion of the building to rental apartments was possible, but that the building does not have sufficient density for this form of financing to be financially viable.
3. The Applicant served the Application on ANC's 3E and 3F. ANC's 3E and 3F had at least thirty (30) days to respond to the Application. Neither ANC submitted a report. There was no opposition to the requested time extension.
 4. By report dated November 23, 2007, the Office of Planning ("OP") recommended approval of the two-year extension request. The OP report stated that the only change in material facts upon which the Commission based its original approval of the PUD was the adoption of the 2006 Comprehensive Plan. OP stated that the Future Land Use Map of the 2006 Comprehensive Plan recommends mixed-use for the Property, a combination of medium-density residential (four to seven story apartment buildings) and moderate-density commercial (buildings generally not exceeding five stories in height), that this is the same designation as was effective in the previous Comprehensive Plan, and that the PUD is consistent with the designation. The OP report concluded that the request is consistent with the Comprehensive Plan.
 5. On January 14, 2008, at its regular monthly meeting, the Commission reviewed and approved the two-year time extension. Upon consideration of the record, the Commission finds 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. The Commission finds there is good cause for the extension because of the Applicant's inability to obtain sufficient project financing for the PUD, following its diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond its control.

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 thirty (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 there is good cause for the extension based on the criteria established in § 2408.11. (11 DCMR § 2408.10.) The three criteria are: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent 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 Application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the Application and allowing them thirty (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 the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a), the Applicant's inability to obtain sufficient project financing for the PUD, following its diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond its control.

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 Z.C. Case No. 03-27, Z.C. 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.

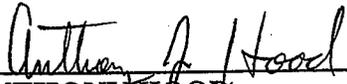
The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq. ("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 J. Hood, Curtis L. 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 MAR 14 2008.



ANTHONY HOOD
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING