

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



**ZONING COMMISSION ORDER NO. 05-30A  
Z.C. CASE NO. 05-30A  
West\*Group Development Company, LLC  
Consolidated Planned Unit Development and Map Amendment –  
6000 New Hampshire Avenue, N.E.  
July 14, 2008**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on July 14, 2008. At the meeting, the Commission approved a request from the West\*Group Development Company, LLC and The Jarvis Company, LLC, the developers, on behalf of 6000 New Hampshire Avenue, LLC, the owner of the subject property (collectively, the "Applicant") for a time extension for an approved planned unit development ("PUD") and related zoning map amendment for property consisting 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 ("the Subject Property") pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations. 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 Order No. 05-30, the Commission approved a consolidated PUD and related zoning map amendment (from R-1-B to R-5-A) to allow construction on the Subject Property of a residential development with an overall maximum density of 0.73 FAR and a combined gross floor area of no more than 369,684 square feet. The project will contain 169 dwelling units, including 38 single-family dwellings, 73 townhomes, and 58 condominium apartments. The order became effective January 19, 2007, and would expire on January 19, 2009.
2. By letter dated and received by the Commission on June 13, 2008, the Applicant filed a request to extend the validity of the PUD approval for a period of two years, such that an application must be filed for a building permit no later than January 19, 2011, with construction to start no later than January 19, 2012. The letter indicates that the project has experienced delay beyond the Applicant's control, specifically, difficulties with financing based upon changes in economic and market conditions, as well as the filing of a lawsuit after approval of the PUD.

3. 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. The case was filed in D.C. Superior Court on November 7, 2006 and assigned case number 06-008142. The complaint is a matter of public record. The litigation settled in November, 2007.
4. 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. The Applicant's investment partner decided to stop all funding requests for new residential projects until market conditions improved. In addition, the lender on the project refused to grant any further extensions on the land loan, which will now 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 Applicant. 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 Applicant is delayed until the market stabilizes before it is able to raise the necessary funding to begin the project.
5. The other parties to this application were Advisory Neighborhood Commission ("ANC") 4B and the Citizens Aware Block Organization ("Citizens Aware"). The Applicant served a copy of this request on both parties. By letter dated and filed with the Commission on July 11, 2008, ANC 4B requested that the Commission schedule a special hearing on the extension request so that ANC 4B could confer with its constituents regarding the existence of pending litigation and the Applicant's inability to obtain sufficient project financing because of changes in economic market conditions. ANC 4B's letter did not dispute that the Applicant served the extension request on all parties, nor did ANC 4B's letter dispute that there is no substantial change in any of the material facts upon which the Commission based its original approval of the planned unit development. By letter dated and filed with the Commission on July 11, 2008, Citizens Aware stated that it met with the Applicant, who explained the background regarding the extension request and answered questions from the community. Citizens Aware concluded in its letter that a public hearing should not be required since the group confirmed the existence of the lawsuit and is well-aware of the conditions in today's real estate market.

### **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) 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 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 § 2408.11, and the hearing shall be limited to the specific and relevant evidentiary issues in dispute. (11 DCMR § 2408.12.)

The Commission concludes that no hearing is necessary because there is no material factual conflict regarding the criteria set forth in § 2408.11, and the parties have been given the period of time to respond stated in the Zoning Regulations.

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 project has experienced delay beyond the Applicant's control, specifically, difficulties with financing based upon changes in economic and market conditions. The Applicant also presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(c), the existence of pending litigation that renders the applicant unable to comply with the time limits of the PUD order.

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. 05-30, Order No. 05-30.

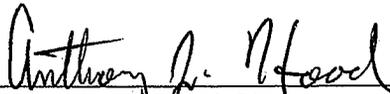
The final PUD approved by the Commission shall be valid until January 19, 2011, within which time an application shall be filed for a building permit, as specified in § 2409.1. Construction shall start no later than January 19, 2012.

The Owner 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 identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, 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 Owner 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 July 14, 2008, the Zoning Commission approved this application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Curtis L. Etherly, Jr. Gregory N. Jeffries, and Michael G. Turnbull to approve; Peter G. May to approve by absentee ballot).

In accordance with the provisions of 11 DCMR §3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on MAR 13 2009.

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

  
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**RICHARD S. NERO, JR.**  
**ACTING DIRECTOR**  
**OFFICE OF ZONING**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



Z.C. CASE NO.: 05-30A

MAR 12 2009

As Secretary to the Commission, I hereby certify that on \_\_\_\_\_ copies of this Z.C. Order No. 05-30A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
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6. Councilmember Muriel Bowser
7. Office of Planning (Jennifer Steingasser)
8. DDOT (Karina Ricks)
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10. Office of the Attorney General (Alan Bergstein)
11. Citizens Aware Block Organization  
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ATTESTED BY:

Sharon S. Schellin  
Secretary to the Zoning Commission  
Office of Zoning