

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 05-30B**

**Z.C. Case No. 05-30B**

**Four Points, LLC**

**(One-Year PUD Time Extension @ Parcels 126/24 and 126/74, Square 3714, Lots 69, 70-73, 801, 824, and 826, and Square 3719, Lot 858)**

**January 9, 2012**

Pursuant to notice, a meeting of the Zoning Commission for the District of Columbia ("Commission") was held on January 9, 2012. At the meeting, the Commission approved a request from 6000 New Hampshire Avenue, LLC ("Applicant") for a time extension for an approved planned unit development ("PUD") for property consisting of Parcels 126/24 and 126/74, Square 3714, Lots 69, 70, 71, 72, 73, 801, 824, and 826 and Square 3719, Lot 858 ("Subject Property") pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations ("DCMR").

**FINDINGS OF FACT**

1. Pursuant to Z.C. Order No. 05-30, the Commission approved a PUD for 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.
2. 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. Furthermore, the project will include 14 units (three 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 townhouses. The project will have an overall density of 0.73 floor area ratio ("FAR") and a maximum building height of approximately 40 feet for the townhouses and single-family homes. The project includes a total of over 186,000 square feet of green space within the development.
3. Pursuant to Z.C. Order No. 05-30A, which became final and effective on March 13, 2009, the Commission approved the validity of Z.C. Order No. 05-30 for a period of

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two years, such that a building permit application for the PUD must be filed no later than January 19, 2011 and construction must start no later than January 19, 2012.

4. The first of these two milestones was achieved on August 10, 2009 when an application for a building permit for the PUD was filed.
5. By letter dated and received by the Commission on December 2, 2011, the Applicant filed a request for a one year extension of Z.C. Order No. 05-30A such that construction must start no later than January 19, 2013. The Applicant's request was supported by an affidavit signed by the Applicant's representative setting forth the evidence that the project has been delayed beyond the Applicant's control.
6. The Applicant indicated that it contracted with a third-party contract purchaser to develop a portion of the approved PUD. During this time period, the third-party contract purchaser had complete site control. The third-party contract purchaser began designing the townhome portion of the approved PUD, and, as noted, submitted a building permit application on August 10, 2009. That permit was designated as application number B0908233, and was processed and received agency comments. However, in mid-2010 the third-party contract purchaser ceased working on the project due to economic uncertainties, and the third-party contract purchaser was not able to secure financing in order to move forward. The third-party contract purchaser's involvement in the project was subsequently terminated in March 2011 when a Termination Agreement was executed. The third-party contract purchaser's inability to move forward with its obligations under the executed purchase agreement, combined with the fact that they had complete site control for nearly two years, resulted in a delay beyond the Applicant's reasonable control.
7. The Applicant regained site control in March of 2011 after the Termination Agreement was executed. The Applicant then began working with a development partner, Comstock Homebuilding, Inc., rather than a contract purchaser, to diligently move forward with the approved project. The partners have engaged in a series of community meetings and began site engineering and architectural planning. Additionally, the development team has had meetings with the Zoning Administrator, the District Department of the Environment ("DDOE") and the District Department of Transportation ("DDOT") to clarify various design and code issues during the course of submitting various building permits to implement the PUD. In that regard, the Applicant has filed the permit applications listed below in order to move forward with the PUD:

a. **Model Homes Site Applications:**

i. **DDOE Application**

1. 8/17/2011- First Submission
2. 9/27/2011- Second Submission
3. 10/20/2011- Final Submission

ii. **DC Water Application**

1. 8/17/2011- First Submission
2. 9/29/2011- Second Submission
3. 10/27/2011- Final Submission
4. 11/18/2011- Review Fees Paid to DC Water

iii. **DDOT Application**

1. 8/25/2011- PDRM application and plans submitted
2. 10/6/2011 - PDRM meeting with DDOT
3. 11/25/2011- DDOT Surface Permit tracking numbers issued
4. 11/28/2011 - DDOT Subsurface Permit tracking numbers issued

iv. **Subdivision Plat**

1. 8/8/2011- Submitted plat and paid fees to Office Of Surveyor
2. 9/23/2011- Approved by DC Treasurer, Assessment Division
3. 9/27/2011- Historic Preservation Signature
4. 9/28/2011- Zoning Administrator Signature
5. 9/30/2011- Subdivision Plat Recorded

v. **Stormwater Management (“SWM”) Covenant**

1. 10/26/2011- Submitted SWM Covenant to OAG for review
2. 11/15/2011- Submitted original executed SWM Covenant to OAG for their signature
3. 11/22/2011 - OAG executed SWM Covenant
4. 11/30/2011- DDOE executed SWM Covenant
5. 12/1/2011 - SWM Covenant recorded

b. **Initial Grading Plan for Single Family and Townhome Units**

i. **DDOE**

1. 10/27/2011- Submitted plans to DDOE

ii. **DC Water**

1. 10/27/2011- Submitted plans to DC Water

2. 11/18/2011- Review Fees Paid to DC Water

c. **Section 1 Site Plan**

i. **DDOE**

1. 12/1/11 - Submitted plans to DDOE

ii. **DC Water**

1. 12/1/11 - Submitted plans to DC Water

iii. **DDOT**

1. 12/1/11 - Submitted plans to DDOT

d. **Building Permit Applications for Square 3714, Lots 125, 126, 127**

i. 10/5/11 - Submitted building permit application no. B1200158

ii. 10/17/11 - Submitted plans to DDOE

iii. 10/18/11 - Submitted plans for third party review

iv. 11/3/11 - Submitted building permit application no. B1201429

v. 11/3/11 - Submitted building permit application no. B1201430

vi. 11/14/11 - DC Water approval

vii. 11/22/11 - Third party review comments submitted to Architect

8. The Applicant is fully committed to moving forward with the project, has moved forward with the permit applications diligently and in good faith, and has invested approximately \$305,000 in preparing construction drawings and permit application fees in order to move forward with development of the project. A number of these applications are currently under review.

9. The project has not changed in any form, and the extension is requested in order to enable the Applicant to continue moving forward with the processing and issuance of building permits and construction of the project. Moreover, there has not been any change in any of the material facts upon which the 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.

10. The Commission finds that the real estate market has been subject to, and continues to suffer from, severe financing, construction, sales and other impediments. From October of 2008 to March of 2011, the Applicant did not have control of the site. Once the Applicant gained site control, they diligently moved forward with the development. However, the Applicant was unable 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. In light of the Applicant's diligent and good faith efforts to obtain permits to move forward with the development of the project, the Commission finds that this extension request satisfies the criterion for good cause shown as set forth in § 2408.11 of the Zoning Regulations.

11. The only other parties to this application were Advisory Neighborhood Commission ("ANC") 4B and the Citizens Aware Block Organization. The Applicant has served a copy of this request on both parties. ANC 4B did not submit a response. Citizens Aware Block Organization submitted a letter dated December 30, 2011 stating it had no comment on the request. There is no dispute to the fact that the Applicant has filed the required permits to move forward with construction of the approved PUD, but is waiting for DCRA to complete its review of such permit applications.
12. The Office of Planning ("OP") submitted a report dated December 16, 2011 indicating that the Applicant demonstrated evidence of good cause for the extension, and OP therefore recommended that the Commission grant the extension request for a period of one year.
13. Because the Applicant demonstrated good cause with substantial evidence pursuant to § 2408.11(b) and (c) of the Zoning Regulations, the Commission finds that the request for the one-year time extension of the approved PUD should be granted.

### **CONCLUSIONS OF LAW**

1. 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 fact 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 as provided in § 2408.11. (11 DCMR § 2408.10.) Section 2408.11 provides the following criteria for good cause shown: (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 reasonable 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

or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

2. The Commission concludes that 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 30 days to respond.
3. The Commission concludes there has been no substantial change in any material fact 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)) to give great weight to the affected ANC's recommendations. ANC 4B did not submit a report.
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) to give great weight to OP recommendations. OP submitted a report indicating that the Applicant meets the extension standards of the Zoning Regulations, and therefore recommended that the Commission approve the requested extension. The Commission has given OP's recommendation great weight in approving this application.
6. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11(b) and (c). Specifically, from October of 2008 to March of 2011, the Applicant did not have control of the site. Once the Applicant gained site control, they diligently moved forward with the development. However, the Applicant was unable 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.
7. Section 2408.12 of the Zoning Regulations 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 § 2408.11.
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 § 2408.11 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**

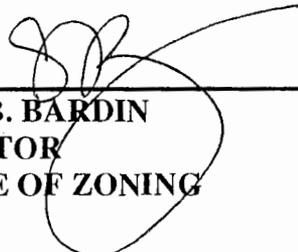
In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a one-year time extension of the validity of Z.C. Order Nos. 05-30 and 05-30A, such that construction must start no later than January 19, 2013.

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 January 9, 2012, upon the motion of Vice Chairman Schlater, as seconded by Chairman Hood, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Marcie I. Cohen, Michael G. Turnbull, and Peter G. May, to adopt).

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 April 13, 2012.

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

  
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**SARA B. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



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

As Secretary to the Commission, I hereby certify that on **APR 6 2012** copies of this Z.C. Order No. 05-30B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Norman M. Glasgow, Jr., Esq.  
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6. Councilmember Muriel Bowser
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9. Office of the Attorney General (Alan Bergstein)
10. Citizens Aware Block Organization  
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ATTESTED BY:

A handwritten signature in cursive script, appearing to read "Sharon S. Schellin", is written over a horizontal line.

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