

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 05-35A**

**Z.C. Case No. 05-35A**

**Two Year PUD and Zoning Map Amendment Time Extension – Square 5877 - Lots 60, 61, 78, 832, 835, 853, 854, 855, 856, 857, 858, 873, 878, and 879**  
**(Stanton Square, LLC)**  
**January 10, 2011**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the “Commission”) was held on January 10, 2011. At that meeting, the Commission approved the request of Stanton Square, LLC (the “Applicant”) for a two-year time extension in which to commence construction of the consolidated planned unit development (“PUD”) approved by Zoning Commission Order No. 05-35. The time extension request was made 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. The PUD project approved in Z.C. Order No. 05-35, which became final and effective on November 23, 2007, authorized the construction of 187 townhouses on the property, which consists of approximately 8.1 acres of land area and is bound by Stanton, Elvans, and Pomeroy Roads, S.E. (Square 5877, Lots 60, 61, 78, 832, 835, 853, 854, 855, 856, 857, 858, 873, 878, and 879).
2. Z.C. Order No. 05-35 also authorized the rezoning of the property from the R-3 Zone District to the R-5-A Zone District.
3. Condition No. 11 of Z.C. Order No. 05-35 provided:

The consolidated PUD shall be valid for a period of two years from the effective date of Zoning Commission Order No. 05-35. Within such time, an application must be filed for a building permit and construction of the project must start within three years of the effective date of this Order, pursuant to 11 DCMR §§ 2408.8 and 2408.9.
4. Thus, in order to avoid the lapse of the Z.C. Order No. 05-35, the Applicant had to file a building permit application for the PUD by November 23, 2009 and begin construction a year later.

5. The Applicant recorded the PUD Covenant in the D.C. Land Records on February 7, 2008, and filed copies of the recorded PUD Covenant with the Office of Zoning and the Office of the Zoning Administrator on February 8, 2008.
6. After the Commission's vote to approve the PUD project, and even prior to the issuance of Z.C. Order No. 05-35, the Applicant proceeded with the preparation of construction drawings and materials which were necessary for the development and construction of the approved PUD project. In satisfaction of § 2408.8 of the Zoning Regulations, the Applicant filed 187 separate building permit applications with the Department of Consumer and Regulatory Affairs ("DCRA") in November and December of 2007 (DCRA required a separate building permit application for each townhouse). All of these permits were filed well in advance of the November 23, 2009 deadline.
7. In accordance with the proffer made by the Applicant, Z.C. Order No. 05-35 required that at least 63 of the 187 townhomes had to be reserved as workforce affordable housing units. At least 20 of these affordable units had to be made available to households making up to 60% of the area median income ("AMI"), and at least 43 of these units had to be made available to households making up to 80% of AMI.
8. In regard to the financing of the 63 affordable townhouses, the Applicant filed a Request for Funding as part of District Department of Housing and Community Development's ("DHCD") June 2007 Request for Proposals ("RFP"). The Applicant was selected to move forward to the next stage of the process and ultimately was notified by the DHCD Loan Committee, on March 7, 2008, that the Loan Committee had approved an \$8.15 million dollar loan for the project. DHCD subsequently provided two drafts of the Conditional Commitment to the Applicant, on May 7, 2008 and again on June 3, 2008. Later in 2008, DHCD informed the Applicant that DHCD did not have adequate funding to provide this project with the contemplated financing. (Exhibit 1.)
9. The Applicant provided an affidavit attesting to the fact that the Applicant has spent over \$1.5 million dollars in order to move the PUD approved plans from a design/development stage, to a construction drawing stage, to the filing of various building permit applications and the payment of significant fees and deposits to the District of Columbia. This information provided evidence that the Applicant actively sought to move this project forward despite the turmoil in the residential housing markets and has spent considerable time and resources in the hope of starting construction on the approved townhouses. (Exhibit 1.)
10. In its December 20, 2010 report to the Commission, the Office of Planning ("OP") recommended approval of the PUD time extension request. OP concluded that the Applicant satisfied the relevant standards of §§ 2408.10 and 2408.11. (Exhibit 4.)

11. The Commission did not receive a written recommendation from the affected Advisory Neighborhood Commission (“ANC”), which for this case was ANC 8A.
12. The Commission did however receive a letter dated December 10, 2010 from the Single Member District Commissioner for ANC 8A07 in support of the time extension request. The letter noted that the area surrounding the townhouse project and property has not changed since the Commission approved the project in 2007. The letter also suggests that the ANC believed that its prior resolution of May 1, 2007, in which it expressed support for the original application, could be construed as supporting any future time extension. However, the Commission received no communication from the ANC either stating as much or authorizing the Single Member Commissioner to represent this view on its behalf.

### **CONCLUSIONS OF LAW**

The Commission may extend the time period of an approved PUD provided the requirements of 11 DCMR §§ 2408.10 and 2408.11 are satisfied.

Section 2408.10 (a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The Applicant served the only party to the original PUD application, ANC 8A, when it filed the PUD modification and time extension application on November 19, 2010. As noted, no ANC report was received, although the Commission did receive a letter from the Single Member Commissioner for ANC 8A07 expressing support of the time extension request into the record of the case.

Section 2408.10(b) requires that the Commission find that there is no substantial change in any of the 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 concludes that extending the time period of approval is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original PUD application. The Commission notes the concurrence of OP with the Applicant’s statement that the area surrounding the property has not changed since the PUD project was originally approved in 2007.

Finally, § 2408.10(c) requires that the applicant demonstrate with substantial evidence that there is a good cause for the proposed extension. Subsection 2408.11 identifies three means by which good cause may be shown, and requires substantial evidence as to each. The first of these is 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.” (11 DCMR § 2408.11(a).)

The Commission finds that the Applicant has demonstrated by substantial evidence that this criterion has been met. The proposed 63 affordable townhouses were to be financed with

commitments from DHCD. The DHCD funds are currently not available. The Commission finds that the Applicant did use diligent good faith efforts to obtain the necessary financing for the project and was ultimately not able to obtain the necessary financing due to economic and market conditions that were beyond the Applicant's reasonable control. The Commission notes that the Applicant does not believe that there would be sufficient demand for the market rate townhouses in this project if construction were to start at this time. The Commission concludes that the Applicant spent considerable time, energy and resources in order to start construction of the townhouses. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR § 2408.11(a).

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 recommendations (as discussed in paragraph 10 above). OP recommended approval of the time extension request and the Commission concurs in its recommendation, and therefore gives OP the great weight to which it is entitled.

#### DECISION

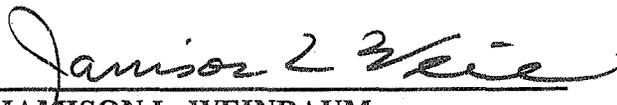
In consideration of the above Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of Z.C. Case No. 05-35A for a two year time extension in Z.C. Order No. 05-35. The final PUD approved by the Zoning Commission shall be valid until November 23, 2012, within which time construction of the PUD project shall start.

On January 10, 2011, upon of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of 5-0-0 (Anthony J. Hood, Greg M. Selfridge, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull 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* on March 4, 2011.



ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION



JAMISON L. WEINBAUM  
DIRECTOR  
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



Z.C. CASE NO.: 05-35A

MAR 4 2011

As Secretary to the Commission, I hereby certify that on \_\_\_\_\_ copies of this Z.C. Order No. 05-35A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- |   |   |
|---|---|
| 1. <i>D.C. Register</i>   | 5. Gottlieb Simon<br>ANC<br>1350 Pennsylvania Avenue, N.W.<br>Washington, D.C. 20004                              |
| 2. Paul Tummonds, Esq.<br>Goulston & Storrs<br>1999 K Street, NW, Suite 500<br>Washington, D.C. 20006   | 6. Councilmember Marion Barry   |
| 3. ANC 8A<br>2100-D MLK, Jr. Ave., S.E.<br>Washington, D.C. 20020                                       | 7. DDOT (Karina Ricks)  |
| 4. Commissioner Lendia Sue Johnson<br>ANC/SMD 8A07<br>1512 Howard Place, S.E.<br>Washington, D.C. 20020 | 8. Melinda Bolling, Acting General Counsel<br>DCRA<br>1100 4 <sup>th</sup> Street, S.W.<br>Washington, D.C. 20024 |
|   | 9. Office of the Attorney General (Alan Bergstein)  |

ATTESTED BY:

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