

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-37C
Z.C. CASE NO. 05-37C
Station Townhouses, LLC
(Two-Year Time Extension for PUD at G, H, 2nd and 3rd Streets, N.E.)
(Square 752, Lots Lot 861)
October 3, 2011

Pursuant to notice, a special public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on October 3, 2011. At the meeting, the Commission approved a request from Station Townhouses, LLC ("Applicant") for a time extension for an approved consolidated planned unit development ("PUD") and related map amendment for property consisting of Lot 861 in Square 752 ("Property"), pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

FINDINGS OF FACT

1. By Z.C. Order No. 05-37 ("Order No. 05-37"), the Commission approved a consolidated PUD and related zoning map amendment for a portion of the Property to C-3-C. The approved PUD authorized construction of a residential building containing a maximum of 389,101 square feet of gross floor area, having a maximum density of 5.07 floor area ratio ("FAR"). The approved project includes approximately 302 residential units and 25,777 square feet of gross floor area devoted to ground floor retail and second floor professional space. The ground floor retail is generally located at the corner of 3rd and H Streets and along 2nd Street to G Street. The maximum height of building is approved to be 100 feet at the corner of 2nd and H Streets, with steps in heights and set backs as shown on the approved plans. The approved project includes a minimum of 318 parking spaces in a below-grade parking garage as well as 60 tandem residential parking spaces. The approved project contains approximately 20,570 square feet of gross floor area devoted to affordable housing units as well as a variety of public benefits and project amenities. Order No. 05-37 became effective upon its publication in the *D.C. Register* on April 11, 2008.
2. By letter dated and received by the Commission on September 3, 2009, the Applicant filed a request to extend the validity of the PUD approval for a period of two years. The Applicant submitted evidence that the project had experienced delay beyond the Applicant's control. The Commission considered and approved the request at its public meeting on October 19, 2009. Z.C. Order No. 05-37A required that an application for a

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building permit must be filed no later than April 11, 2012 and construction must be started no later than April 11, 2013.

3. On August 19, 2011, the Applicant filed a request for a second time extension along with a request for a minor modification. The Applicant provided evidence that it has continued to work diligently to locate project financing and to move forward with the approved project. As a result of that work, the Applicant partnered with an equity investor. Through that partnership, the Applicant conducted a feasibility study which concluded that modifications are needed in order to successfully move forward with the project. The Applicant provided an affidavit setting forth the steps that the Applicant has taken to secure this partnership and the timeframes related with the modifications that dictate this extension, which have resulted, despite the Applicant's diligent, good faith efforts.
4. The Applicant served a copy of the request on all parties (including Advisory Neighborhood Commission ("ANC") 6C, Square 752 Residents, and the Stanton Park Neighborhood Association) on August 19, 2011. ANC 6C submitted a letter dated September 20, 2011, indicating its support for the two-year extension "with the caveat that the developer maintain the property during the two years and look into ways to return public space to the public on the Second Street side." In addition, Drury Tallant, a resident in Square 752 who appeared as the representative of the Square 752 Residents, submitted a letter on his own behalf in support of the time extension.
5. The Office of Planning submitted a report dated September 15, 2011, in support of the time extension.
6. The Commission initially considered the two-year extension at its public meeting on September 26, 2011. The Commission requested that the Applicant provide a response to the issues raised by ANC 6C in its letter dated September 20, 2011. By letter dated September 28, 2011, the Applicant updated the Commission that it had worked closely with the ANC, including agreeing to a maintenance plan for the subject property that was attached to the Applicant's letter. The Applicant also indicated that it would look into whether and how it can return to the public the public space currently occupied by the stoops which formerly provided access to the row houses which have been demolished.
7. Because the Applicant demonstrated good cause with substantial evidence pursuant to § 2408.11(a) of the Zoning Regulations, the Commission finds that the request for the two-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 Section 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. The Commission has given great weight the ANC's recommendation that the time extension be approved. The Commission is satisfied that the Applicant's promise to follow the maintenance plan submitted with its September 28, 2011 letter, and its promise to look into how it can return to the public the public space currently occupied by the stoops sufficiently addressed the issues and concerns stated in the ANC's written recommendation.
5. 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(a). Specifically, the Applicant has been unable to secure project financing for the PUD as approved, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.
6. 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.

7. 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.
8. 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 time extension of the consolidated PUD approved in Zoning Commission Case No. 05-37C. The consolidated PUD approved by the Commission shall be valid until April 11, 2014, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than April 11, 2015.

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 which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On October 3, 2011, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its special public meeting by a vote of **4-0-1** (Anthony J. Hood, Peter G. May, Greg M. Selfridge, and Michael G. Turnbull to adopt; Konrad W. Schlater, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on December 16, 2011.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 05-37C

As Secretary to the Commission, I hereby certify that on **DEC 15 2011** copies of this Z.C. Order No. 05-37C were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Christy Shiker, Esq.
Holland & Knight
2099 Pennsylvania Avenue, N.W. #100
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3. ANC 6C
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4. Commissioner M. Tony Richardson
ANC/SMD 6C05
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Washington, DC 20007
5. Gottlieb Simon
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Washington, D.C. 20004
6. Councilmember Tommy Wells
7. DDOT (Martin Parker)
8. Melinda Bolling, Acting General Counsel
DCRA
1100 4th Street, S.W.
Washington, DC 20024
9. Office of the Attorney General (Alan Bergstein)
10. Stanton Park Neighborhood Assoc.
c/o Monte Edwards
330 E Street, N.E.
Washington, DC 20002
11. Residents of Square 752
c/o Drury Tallant
723 3rd Street, N.E.
Washington, D.C.

ATTESTED BY:

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