

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-08B

Z.C. Case No. 06-08B

**Modification of an Approved Consolidated Planned Unit Development and
Time Extension Request
(Fort Lincoln/Gateway Village, LLC)
March 8, 2010**

This Order pertains to two related requests by Fort Lincoln/Gateway Village, LLC (the “Applicant”). The Applicant seeks approval of a modification to an approved planned unit development (“PUD”) and an extension of the period of approval of the PUD project for the property known as Parcel 173/145 in Square 4325 (the “Property”). The original PUD order was approved in Z.C. Case No. 06-08, which became effective on November 23, 2007. The original PUD order was previously modified through a minor modification approved in Z.C. Case No. 06-08A, which became effective on May 16, 2008.

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on February 1, 2010 to consider the modification and time extension request. The February 1, 2010 public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. At the public hearing on February 1, 2010, the Commission took proposed action to approve the modification.

The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the District Charter. NCPC concluded that the proposed modification of the approved PUD is not inconsistent with the Comprehensive Plan for the National Capital, and found that the project is not consistent with the Fort Lincoln Urban Renewal Plan. A complete discussion of the NCPC’s comments and the Commission’s response is set forth in Finding of Fact No. 8.

The Commission took final action to approve the modification and time extension requests on March 8, 2010.

FINDINGS OF FACT

1. The original PUD application, Z.C. Case No. 06-08, approved a 357-unit townhouse and townhouse condominium development consisting of three sizes of single-family townhouses (16-foot, 20-foot, and 24-foot-wide models) and “two-over-two” townhouse condominiums on approximately 23 acres of vacant land in Ward 5 and in the Fort Lincoln Urban Renewal Plan Area. The site plan approved in the original PUD application included a tot lot, a Mews Green, and a central Community Green that consisted of 1.18 acres of open space that is intended for non-organized, passive and

active recreational use. The original PUD application also required that 30 workforce affordable housing units be targeted for sale to District of Columbia Public School (“DCPS”) employees. Z.C. Order No. 06-08 became effective on November 23, 2007. (Exhibit 1.)

2. On November 19, 2007, the Commission approved the Applicant’s minor modification application (Z.C. Case No. 06-08A), which authorized the following changes to the approved plans:

- Changes to the footprints of the various unit sizes;
- Flexibility to provide a “loft” option in the 16-foot, 20-foot, and 24-foot-wide townhomes;
- Flexibility for the interior 24-foot-wide units to have the option of a detached garage, or a larger rear yard and a parking pad instead of the detached garage;
- Flexibility for the 20-foot-wide units to have the option to convert the interior parking garage to living space; and
- An increase to the maximum height of the 16-foot-wide units from 43 to 47 feet, an increase to the maximum height of the 20-foot-wide units from 42 to 47 feet, and an increase to the maximum height of the 24-foot-wide units from 40 to 42 feet.

The minor modification application modified the overall site plan to include differing townhome widths in the various strings of townhomes throughout the site. The minor modification application did not request any change in the approved PUD’s: amenities package (including the amount of workforce housing); lot configuration; Low-Impact Development (“LID”) components; Community Green and Mews Green; tot lot; or the total number of residential units. Z.C. Order No. 06-08A became effective on May 16, 2008. (Exhibit 1.)

3. On October 15, 2009, the Applicant submitted an application requesting approval of a modification of the approved PUD and an extension of the period of approval of the original PUD project, pursuant to its consent calendar provisions. The Applicant requested the following modifications to the project.

- A reduction in the total number of residential units from 357 units to 334 units. The 334 residential units will be allocated as follows: 91 sixteen-foot-wide townhouses; 103 twenty-foot-wide townhouses; 28 twenty-two and twenty-four foot-wide townhouses; and 112 two-over-two condominium units;
- While the overall site plan proposed in this modification application maintains the general configuration approved in ZC Order No. 06-08A, the Applicant requests a return to the original PUD’s design scheme of having consistent townhouse widths in each string of townhouses;

- The total amount of green space proposed in this modification application is 396,628 square feet (39.5% of the Property), an increase of 64,938 square feet (6.7%) of greenspace from the originally approved PUD; and
- The Applicant's time extension request seeks approval to develop the project in three phases. A building permit for the first phase of development, roughly the eastern third of the Property, will be applied for within one year of the date of approval of this modification application. A building permit for the second phase of development, the middle portion of the Property, will be applied for within three years of the date of approval of this modification application. A building permit for the third phase of development, the western third of the Property, will be applied for within five years of the date of approval of this modification application. Approval of this request requires the Commission to extend the time of validity of the original PUD order, which would otherwise expire November 23, 2009.

The proposed modifications do not impact the approved PUD's: amenities package (including the amount of workforce affordable housing); building heights (as approved in Z.C. Order No. 06-08A); Low-Impact Development ("LID") components; Community Green and Mews Green; or the tot lot. (Exhibit 1.)

4. At the Commission's November 9, 2009 public meeting, the Commission removed the minor modification request from its consent calendar, and instead set it down for a public hearing. The Commission noted that the hearing would be a limited scope hearing. The Commissioners requested specific information regarding the evolution of the plans from the initial approval to the second modification application and information on the need for the proposed phasing of the project and time period of approval. (Transcript of Z.C. Public Meeting, November 9, 2009, pp. 31-35.) The public hearing was subsequently scheduled for February 1, 2010.
5. In its January 22, 2009 report to the Zoning Commission, the Office of Planning ("OP") recommended approval of the PUD modification and time extension requests. OP concluded that the requested modifications and development phasing would be consistent with the intent of the previous approvals, Z.C. Order Nos. 06-08 and 06-08A, and not inconsistent with the Comprehensive Plan. The OP Report noted that "the applicant's phasing request is based on their assessment of the market's ability to absorb the number of rowhouses contained in this project. OP does not object to phasing on those grounds and notes that a project of this size would likely take a number of years to complete in any event."
6. At the February 1, 2010 public hearing, the Applicant provided testimony as to the need for the time extension request and the proposed phasing of the project. Will Collins, on behalf of the Applicant, noted that the proposed phasing plan allows the Applicant to develop the project and construct the project's infrastructure in a reasonable fashion, as

well as react to current market conditions in terms of sales absorption. Mr. Collins noted that the project will now be internally financed with the help of Ryan Homes, the builder of the proposed townhomes, and no longer dependent on third party financing. Mr. Collins noted that in order for this project to proceed, it is critical that the cost of the infrastructure be absorbed in phases. The cost of the first phase of infrastructure is expected to be approximately \$4 million, the second phase is expected to be \$4 million, and the third phase is expected to be approximately \$8 million. Mr. Collins testified that based on current economic conditions, it would be too difficult to try and finance all of these infrastructure costs at one time. (Testimony of W. Collins, Transcript of February 1, 2010 Public Hearing, pp. 9-10, 18-20.)

7. Advisory Neighborhood Commission (“ANC”) ANC 5A did not take a formal position on the modification and time extension request application. The ANC Single Member District (“ANC/SMD”) Commissioner for ANC/SMD 5A12 submitted a letter in support of the modification application.
8. NCPC, in an action dated March 4, 2010 and forwarded to the Commission on March 8, 2010, commented that:
 - The proposed modification to the PUD for the Village at Washington Gateway in the Fort Lincoln Urban Renewal Area is not inconsistent with the Comprehensive Plan for the National Capital; and
 - The project is not consistent with the Fort Lincoln Urban Renewal Area (“PLAN”). The PLAN needs to be changed to address a land use discrepancy. A change would allow for the portion of the site that is currently identified as office/warehouse to be designated as residential. The District will need to submit this change according to D.C. Official Code § 2-1225.31, which sets forth the procedure for changing urban renewal plans. NCPC supports this change.

At the Commission’s March 8, 2010 public meeting, the Commission considered the NCPC comments. The Commission noted that NCPC’s comment that the application was not inconsistent with the Comprehensive Plan favored approval of the application. With respect to NCPC’s comment that the project is not consistent with the PLAN, and that the PLAN needs to be changed to address a land-use discrepancy, the Commission noted that it lacked the authority to modify the PLAN. Only the District’s Mayor, with the consent of the Council, has the authority to make such a modification.

9. At the March 8, 2010 public meeting, the Commission voted to approve the PUD modification application.

CONCLUSIONS OF LAW

The Commission notes that the reduction in the overall number of units is primarily the result of the reduction in the number of two-over-two condominium units (a reduction of 62 of these units). The Commission relies on the Applicant's belief that the reduced number of two-over-two units is more appropriate given the expected market demand for this type of unit. The Commission notes that the total amount of greenspace proposed in this modification application is greater than the amount of greenspace approved in the original PUD.

Upon consideration of the record of this application, the Commission concludes that the Applicant's proposed modifications to the approved plans are consistent with the intent of the previous PUD approvals made in Z.C. Order Nos. 06-08 and 06-08A. The Commission concludes that the proposed modifications are in the best interest of the District of Columbia and are consistent with the intent and purpose of the Zoning Regulations and Zoning Act. The approval of the modifications are not inconsistent with the Comprehensive Plan.

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 5A, when it filed the PUD modification and time extension application on October 15, 2009. ANC 5A has had more than 30 days to respond to this application. 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. As noted above, the Commission finds that approval of the proposed modifications to the approved plans are consistent with the intent of the previous PUD approvals made in Z.C. Order Nos. 06-08 and 06-08A. The Commission similarly 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. Finally, § 2408.10(c) requires that the applicant demonstrate with substantial evidence that there is a good cause for the proposed extension, as provided in § 2408.11. The Applicant's satisfaction of § 2408.11 is addressed in the following paragraph.

Pursuant to § 2408.11, an extension of validity of a PUD may be granted if the applicant has demonstrated with substantial evidence one or more of the following criteria:

- (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, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order.

After making diligent efforts, the Applicant was unable to obtain financing for the entire project and therefore needs to reconfigure the project to obtain financing in increments. The need to proceed with the project in phases meant that the Applicant could not apply for a building permit based upon the original order, and needed the Commission's approval of the phasing proposed. The Commission also finds the testimony of the Applicant's representative, and the report of OP, persuasive that the proposed time extension and phasing plan is necessary to allow the housing market to adequately absorb the large number of residential units proposed in this project. 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 5 above). OP recommended approval of the modification and time extension request and the Commission concurs in its recommendation.

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 this application for a time extension and modification of the approved PUD project in Z.C. Order Nos. 06-08 and 06-08A. The approval of this modification is subject to the following guidelines, conditions, and standards, which supersede those listed in Z.C. Order No. 06-08A:

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 22, 35, and 42 of the record in Z.C. Case No. 06-08, as modified by the plans and materials submitted by the Applicant marked as Exhibit 1 of Z.C. Case No. 06-08B.
2. The interior 22- and 24-foot-wide townhouse units will have the option of a detached garage or a larger rear yard and a parking pad.
3. All other provisions and conditions of Z.C. Order 06-08 remain in effect.

In addition, the PUD Project shall be subject to the following timing and phasing terms, which replace Condition 13 of the Z.C. Order No. 06-08:

13. The Applicant shall file a building permit application for the first phase of development within one year of the date of approval of this Order. Construction of the first phase shall start within two years of the date of approval of this Order. A building permit for the

second phase of development shall be applied for within three years of the date of approval of this Order. Construction of the second phase shall start within four years of the date of approval of this Order. A building permit for the third phase of development shall be applied for within five years of the date of approval of this Order. Construction of the third phase shall start within six years of the date of approval of this Order.

On March 8, 2010, upon motion by the Chairman, as seconded by Commissioner Schlater, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11 DCMR 3028.29, this Order shall become final and effective upon publication in the *D.C. Register* on April 30, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING