GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-02A
Z.C. CASE NO. 07-02A
(Two-Year Time Extension for Consolidated PUD & Related Map Amendment)
Highland Park West, LLC, et al. @ Square 2672
June 14, 2010

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on June 14, 2010. At the meeting, the Commission approved a request from Highland Park West LLC, Columbia Heights Ventures Parcel 26, LLC ("Donatelli"), and the Office of the Deputy Mayor for Planning and Economic Development (the "District") (collectively the "Applicant") for a time extension for an approved consolidated planned unit development ("PUD") and a related Zoning Map amendment from R-5-B to C-3-A for a portion of Lots 726 and 884 in Square 2672 (the "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 Zoning Commission Order No. 07-02 ("Order No. 07-02"), the Commission approved a consolidated PUD and a related Zoning Map amendment from R-5-B to C-3-A for the Property. The approved PUD authorized construction of a 69-unit apartment building and a community-based residential facility ("CBRF"). The apartment building would have a gross floor area of approximately 56,449 square feet, and the CBRF would have a gross floor area of approximately 26,429 square feet. The apartment building would be constructed to a maximum height of approximately 86 feet, 2 inches, and the CBRF would be constructed to a maximum height of approximately 70 feet. The approved project includes 64 off-street parking spaces. Order No. 07-02 became effective upon publication in the *D.C. Register* on June 27, 2008. Pursuant to Condition 12 of Order No. 07-02, a building permit for the PUD had to be filed no later than June 27, 2010, with construction to begin no later than June 27, 2011 in order to maintain the validity of the approval.

2. By letter dated and received by the Commission on April 27, 2010, the Applicant filed a request to extend the validity of the PUD approval for a period of two years. The request if approved would require that an application for a building permit must be filed no later than June 27, 2012, and construction must be started no later than June 27, 2013. The Applicant's request was supported by a letter from the Applicant's financial mortgage

broker setting forth details of the Applicant's inability to obtain project financing at this time, as discussed in Findings Nos. 3 and 4.

3. The Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. The Applicant indicated that it approached over 50 capital sources. However, given current market conditions for residential projects, the Applicant has been unable to obtain the necessary project financing to date. Thus, the project cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control.

4. In addition, as discussed at the initial public hearing on this application, and as indicated in Findings Nos. 16 through 21 of Order No. 07-02, a portion of the Property is currently improved with trailers operated by La Casa, which provides homeless shelters and services in the city. Donatelli was awarded the development rights for the Property pursuant to a request for proposals issued by the RLA Revitalization Corporation, predecessor in interest to the District. The development agreements ultimately executed by the Applicant require the continued presence of the shelter on the site until the District relocates the shelter to a new location. Although Donatelli has agreed to manage the design of the proposed new CBRF facility at the District's cost and to dedicate a portion of the Property for the new facility, the new CBRF will ultimately be constructed under the auspices of the Office of Property Management and will be operated by the Department of Human Services. However, the District has experienced delays in finding another location to move residents from the La Casa shelter, which has thus resulted in delays to moving forward with development of the Property. Although progress has been made with the District, the Applicant cannot move forward with demolition of the existing facilities on the Property or any site work until these facilities are moved, which the District anticipates to occur before the end of this year.

5. The Commission finds that the real estate market has been subject to, and continues to suffer from, severe financing, construction, sales and other impediments. This major change in the real estate market has rendered it practically impossible for the Applicant to obtain project financing, despite the Applicant's good faith efforts. Based upon the supporting materials included with the Applicant's extension request, the Applicant has been unable to obtain project financing for the approved PUD project from the numerous lending institutions it contacted. Thus, the project cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control. Therefore, the Commission finds that this extension request satisfies the sole criterion for good cause shown as set forth in § 2408.11(a) of the Zoning Regulations.

6. On April 27, 2010, the Applicant served a copy of the request on Advisory Neighborhood Commission ("ANC") 1A, which was the only other party to this case. ANC 1A submitted a letter in support of the requested extension. (Exhibit 6.)

7. The Office of Planning ("OP") submitted a report dated June 4, 2010 (Exhibit 5) indicating that the Applicant meets the standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations. OP thus recommended that the Commission approve the requested two-year PUD extension.

8 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.

9. Based on OP's report and the photographs included therein, the Commission finds that there has been no detrimental change in the condition of the Property since approval of the PUD that would indicate that the application should not 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) (2001)) to give great weight to the affected ANC's recommendations. ANC 1A

submitted a resolution in support of the requested extension (Exhibit 6). The Commission has given ANC 1A's recommendation great weight in approving this application.

5. The Commission is required under § 5 of the Office of Zoning Independence Act of1990, 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 standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations, and therefore recommended that the Commission approve the requested extension. (Exhibit 5.) 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(a) and (c). Specifically, the Applicant has been unable to obtain sufficient project financing for the PUD, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control. In addition, the Applicant cannot proceed with demolition work until the District of Columbia, over which the Applicant has no control, removes its temporary shelter facilities from the property.

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 two-year time extension of the consolidated PUD and a related Zoning Map amendment from R-5-B to C-3-A for a portion of Lots 726 and 884 in Square 2672 approved in Zoning Commission Case No. 07-02A. The project approved by the Commission shall be valid until June 27, 2012, 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 June 27, 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. The failure or refusal of the Applicant 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.

On June 14, 2010, upon the motion made by Chairman Hood, as seconded by Commissioner Schlater, the Zoning Commission **ADOPTED** this Order by a vote of **3-0-2** (Anthony J. Hood, Konrad W. Schlater, and Michael G. Turnbull to approve; Peter G. May, having recused himself, not voting; third Mayoral appointee position vacant).

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 August 27, 2010.

Anthony J. Hood
ANTHONY J. HOOD
CHAIRPERSON
ZONING COMMISSION

Jamison L. Weinbaum
JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning

Z.C. CASE NO.: 07-02A

As Secretary to the Commission, I hereby certify that on AUG 24 2010 copies of this Z.C. Order No. 07-02A 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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3. ANC 1A
   733 Euclid Avenue, N.W.
   Washington, DC 20001

4. Commissioner Luis A. Morales
   ANC/SMD 1A03
   1460 Columbia Road, N.W. #C
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5. Gottlieb Simon
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6. Councilmember Jim Graham

7. DDOT (Karina Ricks)

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   1100 4th Street, S.W.
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9. Office of the Attorney General (Alan Bergstein)

ATTESTED BY: S. S. Schellin
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning