

July 15, 2019

Via IZIS

Chairman Anthony Hood  
D.C. Zoning Commission  
441 4<sup>th</sup> Street, N.W.  
Suite 200S  
Washington, D.C. 20001

Re: **Z.C. Case No. 19-09 – Applicant’s Post-Hearing Submission**

Dear Chairman Hood and Members of the Commission:

This letter and attachment serve as the post-hearing submission for the above-referenced application for Voluntary Design Review and special exception approval (the “**Application**”) of a new all-affordable senior assisted living community (the “**Project**”), for which the Commission held a public hearing on June 20, 2019. At the hearing, the Commission requested that the Applicant: (i) meet with the National Park Service (“**NPS**”) to discuss the Project and NPS’ concerns; and (ii) submit plans showing the original proposal to provide small outdoor balconies at the rear of the building.

In addition, since the hearing, it has come to the Applicant’s attention that under the recently approved amendments to the Inclusionary Zoning (“**IZ**”) regulations in Zoning Commission Case No. 04-33I (the “**IZ Amendments**”), assisted living facilities would be exempt from IZ. As a consequence, if the Notice of Final Rulemaking for Case No. 04-33I is published before the order in this case, then the Applicant would be required to voluntarily “opt in” to IZ and request a special exception for the Project to utilize the IZ bonus density. Following consultation with the Office of the Attorney General and the Office of Planning, the Applicant hereby requests such relief, which is addressed in more detail below.

**A. Communications with NPS**

Since the public hearing on this Application, the Applicant has corresponded with NPS representatives to discuss the Project. As of the date of this letter, a

meeting has not yet been scheduled, but the Applicant expects that the meeting will occur and that NPS will file additional comments in the record before the Commission considers final action in this case.

### **B. Original Design with Rear Balconies**

As requested by the Commission, attached as **Exhibit A** is a drawing from the Applicant's original design showing small balconies at the rear of the building.<sup>1</sup> As the Project designer explained at the hearing, after further study of these balconies, it was determined that the balconies would need to project a minimum of six (6) feet in order to provide functional and usable outdoor space for the residents. As they were designed with less than six feet of depth, the balconies would be largely unusable and would not provide a pleasant experience for residents. Given the existing design constraints on the Project, the building would not be able to accommodate the additional gross floor area that would be required to enlarge such balconies while still adhering to the maximum 1.08 FAR permitted in the RA-1 zone.<sup>2</sup> Accordingly, the Applicant modified the design to remove the balconies and enclose the space, and it continues to propose the Project design as shown in Exhibit 9A in the case record.<sup>3</sup> As noted at the hearing, the Project will provide ample outdoor space for residents, and the enclosed areas of the former balconies will be surrounded by glass to maximize light and views.

### **C. Prospective Special Exception Approval to Utilize IZ Bonus Density**

As noted above, the IZ Amendments added assisted living facilities to the list of residential uses that are exempt from IZ under Subtitle C § 1001.6(b). The Commission voted to approve the IZ Amendments on May 13, 2019. Because a Notice of Final Rulemaking has not yet been published for that case, the approved text amendments do not currently apply to the Project, and the Project is permitted to use the IZ bonus density as a matter-of-right. However, because the Notice of Final Rulemaking likely will be published before the order for this Application, the Project would be required to comply with the IZ Amendments in order to receive a building permit. As a result, the Applicant would be required to opt into IZ in order to utilize the bonus density afforded by IZ, which under Subtitle C § 1001.2(e)(3), requires special exception approval. Because of the many previously-described site constraints, use of the IZ bonus density is essential to the Project's feasibility. This

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<sup>1</sup> This drawing is already included with the original plans filed in the record at Exhibit 2E2.

<sup>2</sup> As the Applicant noted at the June 20, 2019 hearing, Subtitle X § 603.1 specifically excludes FAR from the list of development standards for which flexibility may be granted as part of a Design Review application.

<sup>3</sup> The current design without the rear balconies is shown on page 08 in Exhibit 9A in the record.

is a unique situation since the “opt in” relief for IZ bonus density is currently not required for the Project but could be required after this Application is approved.

Accordingly, the Applicant requests prospective special exception relief pursuant to Subtitle C § 1001.2(e)(3) in order to utilize IZ bonus density for the Project, in the event that such relief is necessary. The standard for approval under C § 1001.2(e)(3) is only the general special exception criteria outlined in Subtitle X, Chapter 9. Under Subtitle X § 901.2, special exception relief may be granted where the relief: (i) will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps; (ii) will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and (iii) will meet such special conditions as may be specified.

In this case, the Applicant already demonstrated compliance with these general special exception criteria as part of its request for approval of the Design Review and the CCRC use, which the Applicant hereby incorporates by reference. Accordingly, for the same reasons the Applicant has already described in its initial application materials and at the public hearing that the Project satisfies the general special exception standards, so too does the Project satisfy the general standards as they pertain to approval to utilize IZ bonus density for the Project.<sup>4</sup>

Because of the critical short timeline for developing this important all-affordable assisted living project, it is important that this usual situation not delay consideration of this Application. With the requested additional relief, the Applicant is merely asking that, if it is necessary, the Project remain subject to IZ and the ability to use the IZ bonus density without the need to unnecessarily file and pursue another application.

#### **D. Draft Order**

Lastly, the Applicant hereby submits a draft order for approval of the Application. The Applicant will continue to coordinate with the Office of Zoning staff and Office of the Attorney General counsel, as needed, regarding the draft order.

For all of the reasons described in the Application materials and prehearing submission, as further supported by the Applicant’s testimony at the June 20, 2019

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<sup>4</sup> Incorporation of this additional special exception relief does not create a notice problem since the relief is not currently required, it does not affect any aspect of the Project as already reviewed by the public, and the special exception evaluation criteria have already been reviewed by the public.

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hearing, and as supplemented in this submission, we request that the Commission approve the Application without delay. We look forward to the Commission's vote on July 29, 2019. Please feel free to contact the undersigned at (202) 721-1135 if you have any questions, and thank you for your consideration of this matter.

Sincerely,

/s/  
Cary R. Kadlecek

/s/  
Lawrence Ferris

Attachment

## Certificate of Service

The undersigned hereby certifies that copies of the foregoing document was delivered by email or USPS mail to the following on July 15, 2019:

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/s/  
Cary Kadlecek

**Exhibit A – Previous Design with Rear Balconies**

