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April 27, 2020

VIA IZIS AND E-MAIL

Zoning Commission of the District of Columbia

441 4th Street, NW

Suite 210

Washington, DC 20001

Re: Comments on Z.C. Case 20-07

Text Amendment to Extend ZC & BZA Orders – Subtitle Z, §§ 702.1 – 702.3

Dear Members of the Commission:

Holland & Knight submits the following comments on Z.C. Case No. 20-07, Text Amendment to Subtitles Y and Z, Six Month Extension to ZC & BZA Orders Expiring Between 04/27/20 and 12/31/20. On April 7, 2020, the Office of Zoning issued a memorandum requesting that the Zoning Commission grant the following at their April 27th public meeting for the proposed text amendment: (1) set the case down for public hearing; (2) take emergency action and approve the immediate publication of a Notice of Proposed Rulemaking; and (3) approve a shorter notice period of 30 days for the Notice of Public Hearing.

Given the uncertainty surrounding the ongoing COVID-19 pandemic, we support the proposed text amendment. Nevertheless, for the reasons provided below, we believe that Subtitle Z, § 702.1 should be further refined to ensure that certain first-stage planned unit development (PUD) approvals are given ample opportunity to overcome the many unique challenges associated with our current environment. To accommodate other contested cases set to expire in the near future, including second-stage PUD approvals design reviews, and campus plans, and in the interest of consistency, we also believe that Subtitle Z, §§ 702.2 and 702.3 should be revised in similar fashion.

Validity of First-Stage PUD Approvals

The proposed regulations would extend the validity of an approved first-stage PUD that is set to expire between April 27, 2020, and December 31, 2020 for a period of six (6) months from the expiration date. We believe that Subtitle Z, § 702.1 should be further refined to accommodate a greater range of first-stage PUD approvals, as follows:

702.1 A first-stage approval of a planned unit development (PUD) by the Commission shall be valid for a period of one (1) year, unless a longer period is established by the Commission at the time of approval; **provided that any approval scheduled to expire between April 27, 2020 and December 31, 2020 August 31, 2021 shall remain valid for a period of six (6) months from the date of expiration of the approval.[1]**

As alluded to above, we are currently battling an unprecedented economic climate. The adverse impact of the COVID-19 pandemic cannot be fully ascertained at the moment, but it is highly probable that a complete recovery will not be achieved during the 2020 calendar year. The Mayor has even cautioned that coronavirus cases in the Washington metropolitan area might not peak until June or July of this year.[2] Accordingly, we encourage the Zoning Commission to consider the lingering effects of a prolonged and indeterminable commercial shut down.

While the approval of a first-stage PUD signifies a major step forward in the development process, the finer details of the project are typically evaluated and finalized prior to filing the required second-stage application. The developer must engage an architecture firm to fully design the building, including building materials and landscaping, further develop transportation management and mitigation plans, refine engineering and structural issues, and market the site to potential commercial and retail users to gain input for design options. The Mayor's continued freeze on non-essential businesses will make it very difficult for developers – even those whose first-stage approvals are not set to expire until 2021 – to commence these activities, and prepare a second-stage application that is sufficiently detailed and acceptable for Commission review. The inability to meet in a traditional face-to-face setting, coupled with a hamstrung economy, creates inefficiencies that will impede project development for months to come.

For these reasons, we believe that broadening the range of approvals scheduled to expire until August 31, 2021 is an appropriate measure, and will

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enable even more approved PUDs to be delivered despite the significant obstacles presented by COVID-19.

Validity of Contested Case Approvals and Construction

To ensure consistency across all provisions that address approval validity and implementation, the Zoning Commission should also consider revising Subtitle Z §§ 702.2 and 702.3 in a similar manner. Accordingly, the validity period of contested case approvals nearing expiration, including second-stage PUD approvals, design reviews, and campus plans, should be extended six months beyond August 31, 2021. The same treatment should be given to the construction start date requirement under Subtitle Z, § 702.3.

We believe that the ongoing health crisis not only impacts the ability to prepare a satisfactory second-stage PUD, design review, or campus plan application, but also creates difficulties in finalizing drawings, filing building permits, and ultimately beginning construction. Under this teleworking environment, the necessary stages of permit review cannot be accomplished as efficiently. District government agencies do not have the same resources at their disposal, and communication efficiencies are inevitable. In order to ensure that certain projects, especially those that include a residential component, are delivered on time, we recommend that the Zoning Commission extend the validity period of all contested case approvals that would expire between April 27, 2020 and August 31, 2021.

Conclusion

For the reasons provided herein, we believe that the Zoning Commission should refine the proposed regulations and extend the validity date of first-stage PUD approvals, contested case approvals, and construction that would expire between April 27, 2020 and August 31, 2021.

We very much appreciate your consideration of these comments.

Respectfully submitted,

HOLLAND & KNIGHT LLP

cc: Jennifer Steingasser (Office of Planning, via email)

Joel Lawson (Office of Planning, via email)

[1] Holland & Knight's proposed deletion is marked with double strikethrough text; and revisions are shown in **bold** and **underlined** red color font.

[2] Washington Post article: "Coronavirus projections suggest coming toll; Bowser says 1 in 7 could be infected in D.C. *Available at:*

https://www.washingtonpost.com/local/dc-coronavirus-projection-93000/2020/04/03/35626692-75b3-11ea-a9bd-9f8b593300d0_story.html.

Submitted on 4/27/2020 by:

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