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December 31, 2013

VIA HAND DELIVERY

Zoning Commission of the
District of Columbia
441 4th Street, N.W.
Suite 210-S
Washington, DC 20001

RECEIVED
D.C. OFFICE OF ZONING
2013 DEC 31 AM 11:35

Re: **Time Extension Request for Squares 739, 767, and 768--
Zoning Commission Order No. 03-12I/03-13I**

Dear Members of the Zoning Commission:

On behalf of Capper Carrollsburg Venture, LLC and the District of Columbia Housing Authority ("DCHA") (collectively the "Applicant"), this letter serves as a request for a five-year extension of the first-stage approval for Squares 739, 767, and 768, which were preliminarily approved in Zoning Commission Order No. 03-12/03-13, and extended in Z.C. Order No. 03-12I/03-13I. This request, if approved, would require that second stage approval for Squares 737, 767, and 768 must be filed no later than December 31, 2018. A copy of Order No. 03-12I/03-13I is attached as Exhibit A.

This request is filed pursuant to Section 2408.10 of the Zoning Regulations for good cause shown. A completed application for the extension is submitted herewith, and a check in the amount of \$520.00 made payable to the D.C. Treasurer for the requisite filing fee pursuant to Section 3040.5 of the Zoning Regulations is also enclosed.

I. INTRODUCTION

A. Factual Background

On March 21, 2003, the Applicant filed applications seeking preliminary and consolidated approval of a PUD for property located in the Southeast quadrant of Washington, D.C. and generally bounded by 2nd Street on the west, 7th on the east, Virginia Avenue on the

ZONING COMMISSION
District of Columbia
District of Columbia
CASE NO. 03-12I/03-13I
EXHIBIT NO. 2, 2A-D

north, and M Street on the south. The property consists of approximately 927,000 square feet of land area.

In fulfillment of housing, economic, and social goals on both the local and national level, the overall development will provide the one-for-one replacement and redevelopment of one of the most severely deteriorated public housing projects in the city. The approved overall project will include a maximum of 1,747 residential units, 708,302 square feet of office space, 51,000 square feet of retail space, 1,780 off-street parking spaces, and a community center building.

The project is made possible, in part, by a HOPE VI grant from the U.S. Department of Housing and Urban Development. The public housing included in this application will significantly advance the overall goals of the PUD by providing financial leverage and support for the construction of the replacement public housing and the approved community center.

Pursuant to Order No. 03-12/03-13, the Zoning Commission granted preliminary and consolidated approval for the overall development, including Squares 739, 767, 768, and those portions of Square 737 that include Lot 814 and Reservation 17A. In its initial application to the Commission, the Applicant proposed to develop (i) Square 739 with a 6 to 13-story residential apartment building, having a height of 65 to 130 feet and providing 322 residential units and 6,000 square feet of office and/or retail uses; (ii) Square 767 with a 6-story residential apartment building, having a height of 65 feet and providing 147 residential units and 6,000 square feet of office and/or retail uses; and (iii) Square 768 with a 11-story residential apartment building, having a height of 110 feet and providing 295 residential units and 6,000 square feet of office/retail uses. Z.C. Order No. 03-12/03-13. Pursuant to Order No. 03-12A/03-13A, the Zoning Commission granted modifications to the preliminary and consolidated PUD subject to Condition 7, which required that applications for final approval of the high-rise apartments in Squares 739, 767, and 768 must be filed by October 31, 2008. The programs for Squares 739, 767 and 768 did not change at that time.

The Zoning Commission approved the last order affecting Squares 739, 767, and 768 in Order No. 03-12I/03-13I, which became effective upon publication in the *D.C. Register* on June 26, 2009. This Order requires the Applicant to file an application for second-stage approval for the remaining portions of the project in Squares 739, 767, and 768 by December 31, 2013. As discussed in more detail below, the Applicant is requesting a five-year time extension of this deadline based upon unexpected delays beyond the Applicant's control.

B. Jurisdiction of the Zoning Commission

Section 2408.10 of the Zoning Regulations authorizes the Zoning Commission to extend the time periods set forth in Section 2408.8 (two year requirement to file a building permit application) and Section 2408.9 (three year requirement to begin construction), provided the following conditions are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;

- (b) There is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the planned unit development 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.

The sole substantive criterion for determining whether a PUD should be extended is whether there exists "good cause shown." The Zoning Regulations define "good cause shown" in §2408.11, as evidence of one or more of the following:

- (a) An inability to obtain sufficient project financing for the planned unit development, 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 planned unit development by the expiration date of the planned unit development 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 planned unit development order.

II. THIS EXTENSION REQUEST WAS SERVED ON ALL PARTIES

Other than the Applicant, the only parties to this case were Advisory Neighborhood Commission 6B ("ANC 6B") and Advisory Neighborhood Commission 6D ("ANC 6D"). As indicated on the Certificate of Service attached hereto, the Applicant has served this request for an extension of time on ANC 6B and ANC 6D.

III. THERE IS GOOD CAUSE FOR EXTENSION OF THE PUD VALIDITY

A. The Project Has Experienced Delay Beyond Applicant's Control

Section 2408.11(a) authorizes the grant of an extension of PUD validity for projects confronting difficulties with financing based upon changes in economic and market conditions beyond an applicant's control. The Applicant has taken many steps to move forward with the overall project, including:

- Built 623 residential units, of which 386 are replacement public housing units. The completed units are comprised of a 162-unit elderly-only building, a 138-unit apartment building, and 323 units of mixed-income townhomes. The townhomes include 86 public housing units.

- Obtained a building permit for a 195-unit apartment building (which includes 39 replacement public housing unit), for which financing is being finalized for the northern portion of Square 882.
- Secured approval for the design of the new Community Center on Square 881 W.
- Subdivided a number of the prior existing lots into new, consolidated single lots of record.
- Created assessment & taxation lots for a number of the properties included in the overall development.
- Applied for, and obtained, raze permits to demolish a number of structures within the overall project boundaries.
- Gone through the Zoning Commission process and received second-stage approvals and modifications for large portions of the development, as outlined above.
- Invested approximately \$12,827,146.14 in infrastructure improvements to enable the overall development to move forward. Over half of the public infrastructure improvements that are associated with the development have been completed.
- Invested a significant amount in preparing construction drawings and filing a building permit application for the residential building in Square 882.
- Received a building permit and closed on financing for Square 882.

However, as the Zoning Commission has recognized in recent months, the real estate market has been subject to, and continues to suffer from, severe financing, construction, sales and other impediments. As set forth in the letter prepared by the DCHA attached hereto as Exhibit B, this extension is requested in order to provide additional time to secure the necessary financing required to move these components of the overall development forward.

Since the PUD received final approval, the Applicant has diligently pursued financing, marketing, and development of the approved project components. For example, as indicated in the letter attached hereto as Exhibit C and prepared by Dan McCabe, Vice President of Urban Atlantic, the Applicant has invested over \$250 million to date in securing entitlements, infrastructure, improvements, permitting, construction, and other efforts to implement the overall approved Capper/Carrollsborg PUD. In addition, as described in the letter attached hereto as Exhibit B, and prepared by Adrienne Todman, Executive Director of DCHA, market conditions, limitations of HUD regulations, and difficulties of financing mixed income properties have slowed down the pace at which public housing units have been able to be constructed at the site. With respect to financing the residential buildings in Squares 739, 767, and 768, the Applicant has pursued numerous financing methods, but has yet to come up with a viable financing solution given market conditions for construction financing. As indicated in the letter from EagleBank, attached hereto as Exhibit D, EagleBank is interested in financing construction for the residential buildings in Squares 739, 767, and 768, but requires more leasing data in the area

before it can be comfortable underwriting a mixed income transaction. Based on this and similar responses from other banks, the Applicant has been unable to identify a lending partner that can successfully underwrite the residential projects on Squares 739, 767, and 768. As the neighborhood begins to mature and more retail and employment opportunities are created, the Applicant believes that the market fundamentals will improve to support the financing for the buildings in Squares 739, 767, and 768.

Thus, redevelopment on Squares 739, 767, and 768 cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic market conditions beyond the Applicant's control. Therefore, this request for a time extension satisfies the sole criterion for good cause shown as set forth in Section 2408.11(a) of the Zoning Regulations.

B. No Substantial Changes to Approved PUD

In addition to requiring the demonstration of "good cause," §2408.10 of the Zoning Regulations requires the following:

(b) There is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the Commission's justification for approving the original PUD ...

In connection with this time extension request, the Applicant has submitted an application to the Zoning Commission seeking a modification of Order No. 03-12H/03-13H, to reallocate the location of the required public housing units to provide (i) 206 public housing units within the approved PUD in Squares 739, 767, and 768, and (ii) 30 public housing units outside of the approved PUD in adjacent Square 737, Lot 77.

This extension is requested in order to enable the Applicant to continue its diligent efforts to secure the necessary project financing. The Applicant remains committed to moving forward with the project and to fully complying with the conditions and obligations imposed as part of the PUD approval.

C. No Hearing is Necessary

Section 2408.12 of the Zoning Regulations provides:

The Zoning Commission shall hold a public hearing on a request for an extension of the validity of a planned unit development only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the planned unit development concerning any of the criteria set forth in §2408.11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.

A hearing is not necessary for this extension request since there are no material factual conflicts generated concerning any of the criteria set forth in §2408.11. There is no dispute that:

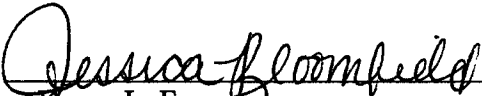
(1) the Applicant has been unable to secure the necessary project financing for the project at this time, and (2) there are significant impediments in the marketplace to proceeding with the project at this time. Thus, there cannot be any material factual conflicts generated concerning any of the criteria by which the Zoning Commission is required to consider this request.

IV. CONCLUSION

In light of this demonstration of good cause and for the reasons stated herein, the Applicant respectfully requests that the Commission approve a five-year extension of time such that that second stage approval for Squares 739, 767, and 768 must be filed no later than December 31, 2018. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 
Kyrus L. Freeman
Jessica R. Bloomfield*

Attachments

cc: D.C. Office of Planning (via hand delivery)
Advisory Neighborhood Commission 6D (via U.S. Mail)
Advisory Neighborhood Commission 6D (via U.S. Mail)

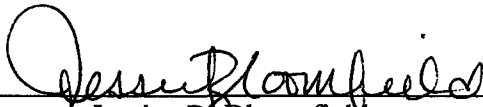
*Admitted to practice in Pennsylvania Practicing in the District of Columbia pursuant to D C Court of Appeals Rule 49(c)(8)

CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2013, a copy of the foregoing Applicant's Request for Extension of Time was served by first-class mail on the following at the address stated below:

Advisory Neighborhood Commission 6B
921 Pennsylvania Ave., S.E., Suite 305
Washington, DC 20003

Advisory Neighborhood Commission 6D
PO Box 71156
Washington, DC 20024



Jessica R. Bloomfield