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goulston&storrs
counsellors at law

John T. Epting
Director

jepting@goulstonstorrs.com
202-721-1108 (tel)
202-263-0508 (fax)

Jeff C. Utz
Associate

jutz@goulstonstorrs.com
202-721-1132 (tel)
202-263-0532 (fax)

May 3, 2013

By Hand Delivery

Lloyd Jordan, Chairman
D.C. Board of Zoning Adjustment
441 4th Street, N.W., Second Floor
Washington, D.C. 20001

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17606-D
EXHIBIT NO. 55

Re: Board of Zoning Adjustment Case No. 17606-D – Request for Extension of Order – Post-Meeting Submission

Dear Chairman Jordan and Members of the Board:

On behalf of Fort Totten South, LLC (the “**Property Owner**”), the owner of 5543-5575 South Dakota Avenue, N.E. (Lot 22 in Square 3760) (the “**Property**”), we hereby submit this additional information requested during the public meeting on April 23, 2013 (“**Meeting**”). The Applicant is requesting a two (2) year extension of the expiration date of BZA Order No. 17606-C (“**Extension Request**”). BZA Order No. 17606-C (collectively with BZA Order No. 17606 and BZA Order No. 17606-B, the “**Orders**”) extended the previous Order and will expire on May 9, 2013 without action from this Board.

I. Background of Request and Project

As discussed in the Applicant's March 13, 2013 letter, the Orders will expire before the Property Owner will be able to submit its building permit application for its project at the Property because of delays resulting from factors outside the Property Owner's reasonable control. As described in the March 13, 2013 letter and within this letter and its attachments, good cause exists for the Board to grant this Extension Request. There is substantial evidence that governmental agency actions, economic conditions, and other factors beyond the Property Owner's reasonable control are the cause for the Extension Request.

Unlike the typical requests for time extensions based upon financing and related issues or economic conditions, the primary reason for the delay in the implementation of the Order is the delay associated with the District Department of Transportation ("DDOT") reconfiguration and reconstruction of the South Dakota Avenue, Riggs Road, and 3rd Street, N.E., intersection (the "Intersection") and portions of 3rd Street, Chillum Place, and Kennedy Street, N.E. (the "DDOT Project"). The intersection was initially intended to be finished in the Fall of 2009, yet the DDOT work was only substantially completed in the fourth quarter of 2012 and is just now closing out in May 2013. In fact, the delay in the reconstruction work of the adjacent intersection is the same primary reason that allowed the Board to approve the previous two extension requests for the Order.

II. Affidavit from Property Owner and Correspondence to DDOT

As requested by the Board during the Meeting, attached as Exhibit A please find the affidavits (the "Affidavits") of the Property Owner and Dakota Square, LLC, the owner of the Property prior to its transfer to the Property Owner, detailing the history of the project and the

direct impact of the DDOT Project's delay on the Property Owner's project. In addition, the Affidavits detail the Property Owner's (and prior owner's) good faith efforts to bring this project to fruition. Attached as Exhibit B to this submission, please find the development team's letter to DDOT, which DDOT requested in order to generate a letter to describe the timing of and efforts relating to the DDOT Project.

The Affidavits and other evidence provided in this letter explain the significant scope of the DDOT Project, which had a budget that exceeded \$7.95 million. As a result of this significant scale, as described in the Affidavits, the Property was not accessible during the term of the DDOT Project. The Affidavits detail the construction delays and complications associated with the Intersection. In fact, the boundaries of the Property will not be finalized until the DDOT Project is closed out. We know of no other instance where such an obstacle faced a development approved by the BZA.

As described in the Affidavits, the timing of the DDOT Project was subject to a great deal of delay. DDOT began its initial planning for the DDOT Project in 2006 and planned to complete it by the Fall of 2009. However, for a variety of reasons including funding delays, complications discovered during the construction, including the location of significant utilities requiring relocation (including but not limited to the three (3) large utilities described in the Affidavits), and a redesign process, the completion of the Project approved by the Order was delayed several years. It should be noted that the DDOT Project initially did not include funding for the scale of these efforts. In addition, DC WASA, Washington Gas, Verizon and the Federal Highway Administration were involved in this work, which introduced additional layers

of delay. Ultimately, the Project was substantially completed by the fourth quarter of 2012 and has still not been completely closed out.

The Property Owner has been working closely with DDOT throughout the DDOT Project and has continuously updated its timing as the DDOT Project's delays have unfolded. The Property Owner will continue to work closely with DDOT to finalize the DDOT Project and to implement the Project since the two projects have such a significant interrelationship.

III. Additional information on DDOT construction

In addition to the Affidavits, there is additional documentation that demonstrates the significant delay of the DDOT Project.

For example, the "News from Muriel" newsletter, dated February 22, 2008, attached as Exhibit C, gives evidence that the DDOT Project was already an ongoing effort, which warranted an "update", as of February 2008. Similarly, attached as Exhibit D, the Citizens Aware newsletter from November 2008 gives further evidence that the DDOT Project had been long discussed in the community and, at such time, the DDOT Project's commencement date was again delayed to begin in the first half of 2009. The Citizens Aware newsletter also indicates the close relationship between the DDOT Project and Intersection and the Project.

The DDOT Project finally broke ground in March 2010, per the press release from then-Mayor Adrian Fenty's Office, attached as Exhibit E. That press release notes that the DDOT Project was intended to last a total of sixteen (16) months. Clearly, that estimate, on which the Property Owner planned its Fort Totten efforts, proved wildly optimistic. In fact, the final boundaries of the Property are still not set as of the submission of this letter, 38 months after the

ground breaking for the DDOT Project, and three (3) and a half years after the DDOT Project was intended to be completed.

DDOT's periodic status reports, plans, and press releases provide additional ongoing updates regarding the status of the DDOT Project and the significant delays that project faced. Attached as Exhibit F, an assortment of DDOT's weekly status reports provide a window into the ongoing construction issues. Specifically, these status reports give a great deal of insight into the challenges and obstacles that contributed to the delay of the DDOT Project, including the following noteworthy updates:

- DDOT's construction update dated August 23, 2011, attached as Tab 1 of Exhibit F, noted that, at the time of this update, the DDOT Project's target completion date had again moved. By the time of this update, the target completion date had been updated to July 31, 2011 (which date the construction had already passed at the time of the update). The update also provided a great deal of information regarding the utility conflicts that lead to the significant delay. These delays included: (i) the South Dakota Avenue junction chamber, which was located twenty (20) feet away from the location shown on DDOT's plans and required ten (10) months to resolve, (ii) 24" gas and 48" storm sewer lines located along 3rd Street, which caused additional delay, and (iii) 8" gas and 15" sanitary sewer lines located along South Dakota Avenue which required ten (10) months to resolve. Page 11 of this update provides a detailed overview of the delays permeating the DDOT Project, largely due to the work relating to the utility relocations (both above and below grade) and changed underground conditions.

- DDOT's construction update dated September 15, 2011, attached as Tab 2 of Exhibit F, included a great deal of information about the ongoing nature of the DDOT Project, while also exhibiting that the "total project" was approximately 24% completed as of September 15, 2011.
- DDOT's construction updates dated December 8, 2011 through January 12, 2012, attached as Tab 3 of Exhibit F, note that delay was created due to a lack of direction regarding the closure of the ramp connecting Riggs Road to South Dakota Avenue. The DDOT construction team was required to create a temporary work zone to keep the project moving forward. This ramp formed the entirety of the street frontage for the Property. This construction update demonstrates the extent to which the boundaries of the Property have been affected by the DDOT Project.
- DDOT's construction update dated April 10, 2012, attached as Tab 4 of Exhibit F, describes a Verizon facility that was unexpectedly found on the site, which added additional delay to the DDOT Project.
- DDOT's construction updated dated May 3, 2012, attached as Tab 5 of Exhibit F, describes a project with almost 20% of the initial budget remaining. The photographs included within this status update also show the DDOT Project's significant work ongoing at this point in time – including the installation of sewer lines. Although this status update did not represent the completion of the DDOT Project's work, it was the last publicly available update.

As another snapshot in time showing the status of the DDOT Project, on February 28, 2012, the ramp connecting Riggs Road and South Dakota Avenue was announced to be closed

“on or about” March 12, 2012, as shown on Exhibit G. Note that the street closing plat officially terminating the inclusion of this ramp into the District of Columbia’s street plan has not yet been recorded.

In addition, the most recent publicly available document relating to the DDOT Project is the Draft Transportation Improvement Plan dated April 11, 2013. This plan includes funding for the DDOT Project (described as “South Dakota Ave. & Riggs Rd. Intersection Improvements”) for 2013, which demonstrates that further work on the DDOT Project and Intersection is required. Please see page D-25 of Exhibit H, which includes two pages from the Draft Transportation Improvement Plan.

IV. Financing Efforts

Despite the difficulties to implement the Orders created by the DDOT Project, the development team made multiple attempts to obtain financing for the Project. The development team retained the services of Cassidy/Turley to solicit funding from third parties. The relevant pages from the funding solicitation issued by Cassidy/Turley relating to this Project, dated October 20, 2008, is attached hereto as Exhibit I. This initial funding solicitation was not successful in arranging financing for the Project, largely due to the uncertainty regarding the timing of the Project created by the DDOT Project and work relating to the Intersection.

At the end of 2008, the development team retained Studley to solicit further interest in financing the project. Studley again went to the market in early 2009 and was not successful in obtaining a financing commitment for the Project.

Then the development team again attempted to obtain financing in 2010. In September 2010, as part of that renewed financing effort, the original applicant, Dakota Points, LLC, was

recapitalized by Fort Totten South, LLC, an affiliate of The JBG Companies. This allowed the Project to continue to progress, although activity remained constrained due to the delays of the DDOT Project discussed above.

V. Conclusion

The Property Owner hereby requests that, pursuant to Section 3130.6 of the Zoning Regulations, the BZA extend the time limits relating to BZA Order No. 17606-C for good cause shown and allow the Fort Totten South Orders to remain effective for two (2) years after May 9, 2013. Section 3130.6 sets forth clear standards against which the Board must evaluate this Extension Request. Upon receipt of this written request, the Board may extend the time period of the Orders “for good cause shown.” The Board must determine that:

- (a) this Extension Request is served on all parties to the application;
- (b) there is no substantial change of any of the material facts upon which the Board based its original approval that would undermine the Board’s justification for approving the original application; and
- (c) the Property Owners demonstrate good cause for the requested extension, with substantial evidence for any one or more of the following criteria.

The criteria supporting a finding of “good cause” include “(1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant’s reasonable control; (2) An inability to secure all required governmental agency approvals by the expiration date of the Board’s order because of delays that are beyond the applicant’s reasonable

control; or (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control."

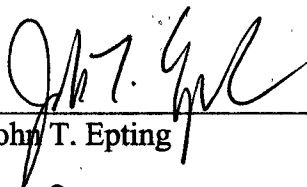
As detailed above, the Board should find that good cause exists to grant this Extension Request because of "condition[s], circumstance[s], or factor[s] beyond the applicant's reasonable control" and because the Property Owner was unable "to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control." These delays and impacts associated with the DDOT Project were entirely outside of the Property Owner's control, and constitute the "good cause" necessary to grant this Extension Request.

The difficult economic climate constitutes a second, independent condition beyond the applicant's reasonable control that would support the Board finding that good cause exists to grant the Extension Request.

We request that the Board extend the Fort Totten South Orders by a period of two (2) years from May 9, 2013.

We greatly appreciate your consideration of this matter.

Respectfully submitted,

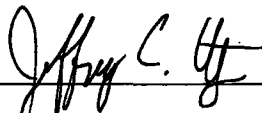


John T. Epting

Jeffrey C. Utz

Certificate of Service

I certify that on May 3, 2013, I delivered a copy of the foregoing document via hand delivery or first class mail to the addresses listed below.



Jeffrey C. Utz

Jennifer Steingasser
Stephen Mordfin
Office of Planning
1100 4th Street, S.W., Suite E650
Washington, D.C. 20024

ANC 4B (9 copies)
6856 Eastern Avenue, N.W. #316
Washington, D.C. 20012

Douglass Sloan
313 Nicholson Street, N.E.
Washington, D.C. 20011