

**BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA**

Application of
Fort Totten South, LLC

*
*
*
*

Board of Zoning Adjustment Case No. 17606-D

Affidavit of Fort Totten South, LLC

The undersigned, being duly sworn according to law, deposes and says:

1. I am over 18 years of age and competent to testify in this matter.
2. I am the Managing Member of JBG/Company Manager IV, L.L.C., the managing member of Fort Totten Member, L.L.C., the managing member of Fort Totten Corporate Member, L.L.C., the managing member of Fort Totten South, LLC (“**Owner**”), the applicant for the extension of Board of Zoning Adjustment Order No. 17606-C (the “**Order**”, collectively with BZA Order Nos. 17606, 17606-A, and 17606-B, the “**Orders**”) relating to 5543-5575 South Dakota Avenue, N.E. (Lot 22 in Square 3760)(“**Property**”).
3. Owner purchased the Property and assumed development responsibilities for it in September 2010 from Dakota Points, LLC, which was the initial applicant for BZA Case Nos. 17606 and 17606-B.
4. I am the Washington, DC-based principal in charge of the project on the Property for Owner.
5. As Principal in Charge, I am responsible for efforts relating to designing, constructing, and financing the building at the Property for Owner (“**Project**”).
6. Since the date of the prior extension by the Order, April 12, 2011, Owner has been diligently proceeding in good faith with the Project. However, as described in the Owner’s letter requesting an extension on the validity of the Order submitted to the BZA on March 13, 2011 and the letter to which this affidavit is attached, the construction of the Project as approved by the Order has not yet been feasible.

DDOT Road Realignment and Intersection Construction

7. Based on our study of the Property and adjacent areas, since 2006, DDOT has been planning the reconfiguration and reconstruction of the South Dakota Avenue, Riggs Road, and 3rd Street, NE, intersection (the “**Intersection**”) and portions of 3rd Street, Chillum Place, and Kennedy Street, NE (the “**DDOT Project**”).
8. Based on our study of the Property and adjacent areas, the DDOT Project was initially planned to begin in Spring 2008 and be completed by fourth quarter of 2009. Such timing of the DDOT Project would have allowed for the submission for a building permit for the Project by the expiration date of BZA Order No. 17606.

Board of Zoning Adjustment
District of Columbia
CASE NO. 17606
EXHIBIT NO. 55A

9. Since the initial approval of BZA Order No. 17606, the DDOT Project has been delayed numerous times and the completion date has been repeatedly pushed back. Delays on the DDOT Project are directly linked to the ability of Owner (and its predecessor) to implement the Orders by beginning construction, or even apply for a building permit.
10. Although the DDOT Project was intended to commence in Spring 2008 and reach completion approximately sixteen to eighteen months later, such work did not start until March 2010 and construction activity only recently reached substantial completion in the fourth quarter of 2012.
11. DDOT's delays were in large part due to significant, largely unexpected utilities and infrastructure located within the DDOT Project area that required significant redesign and removal and replacement efforts.
12. Three of the larger utility conflicts that significantly impacted the schedule of the DDOT Project were:
 - The South Dakota Avenue junction chamber which was located unexpectedly in the DDOT Project area in November 2010 and resolved in August 2011. The resolution of this utility required the involvement of DC WASA, which led to the requirement for additional approvals and delay.
 - The 24" gas and 48" storm sewer lines on 3rd Street, NE which were unexpectedly located in May 2011 and caused significant delay. The resolution of these utilities required the involvement of Washington Gas, which led to the requirement for additional approvals and delay.
 - The 8" gas and 15" sanitary sewer lines on South Dakota Avenue, NE which were unexpectedly located in September 2010 and resolved in July 2011. The resolution of these utilities also required the involvement of Washington Gas, which led to the requirement for additional approvals and delay.
13. Due to the additional costs and delays associated with the above described complications with the DDOT Project, DDOT met with the Federal Highway Administration to obtain concurrence and extend the approvals of the documentation required for the DDOT Project, which introduced further elements of delay to the DDOT Project.
14. While the construction work on the DDOT Project has been substantially completed, the DDOT Project has not yet been closed out, since the plat to close the South Dakota Avenue ramp has not been recorded, among other items.
15. The delay of the DDOT Project led to two problems for the implementation of the Project: (a) the Property was inaccessible over the course of the DDOT Project, and (b) more importantly, the final boundaries for the Property have been indeterminable until the completion of the DDOT Project. The Project has been delayed until the completion of the DDOT Project.
16. Regarding the boundaries of the Property, the DDOT Project closed the ramp connecting Riggs Road and South Dakota Avenue, NE. The effect of such closure is not yet known since the plat to close the ramp has not been recorded. Therefore, the closed land area has not been finalized and the boundaries of the Property are not yet completely known.
17. Development at the Property could not have reasonably proceeded until the DDOT

Project was finished. It would not be reasonable to expect any developer to finalize a set of construction drawings that would allow for the submission of a building permit application or to proceed with the construction of the Project on any portion of the Property, if there is a possibility that the overall development will be further delayed and the boundaries of such property are not known. Changes to such boundaries might alter the design of the building or the site plan associated with the structure.

18. The DDOT Project affected the ability to develop both the “Fort Totten North” project – located immediately northwest of the Property and subject to BZA Order No. 17600, 17600-A, and 17600-B – and the “Fort Totten South” Project. Affiliates of Owner and Dakota Points began to implement the project at Fort Totten North as soon as possible, which will allow the Fort Totten South Project to begin earlier. Financing has been obtained for the Fort Totten North project and it is under construction. We note that the Fort Totten North property was also not as landlocked as the Property and that the South Dakota Avenue ramp closure affected the boundaries of the Property in a way that the boundaries of the Fort Totten North lot were not affected.

Phasing/Good faith efforts

19. Development on the Property has always been contemplated as a phased project, with the development of Fort Totten North preceding activity at Fort Totten South.
20. An affiliate of Owner, Fort Totten North, LLC, proceeded to submit for a building permit under the BZA Orders affecting the Fort Totten North project in 2012, once the DDOT Project progressed closer to completion and other District approvals, such as Large Tract Review (“LTR”) approval, were obtained. The LTR process lasted significantly longer than planned by the development team.
21. As discussed above, plans to redevelop Fort Totten North were delayed by factors outside of Owner’s control. For instance, negotiations with DDOT over Fort Totten North and the LTR process proceeded more slowly than anticipated. In combination with the delays described above relating to the DDOT Project, these delays with Fort Totten North had a domino effect, delaying the timeline for the Project on the Property as a consequence.

Financing Efforts

22. Due to the delays and uncertainty created by the DDOT Project, no lender would commit to funding such project until they also know that the Project was proceeding with certainty. Therefore, Owner could not be expected to construct the building approved by the Orders until the DDOT Project was complete.
23. In 2010, Owner entered into a joint venture with Dakota Points, LLC to partner for the recapitalization of the Project. However, conventional construction financing has still not been able to be located due primarily to the uncertainty of the Project resulting from the DDOT road realignment work.
24. Lenders have been hesitant to participate in a development when the development is subject to unfavorable transportation or access conditions and the boundaries are not completely known.

Conclusion

25. Since 2007, the development team has been meeting with various District agencies, including the Office of the Deputy Mayor for Planning and Economic Development, and DDOT to garner feedback on the Project.
26. The development team would have made application for building permits and commenced construction on the previously approved plan as soon as practicable following the issuance of the Order had the DDOT Project and the Fort Totten North project not been delayed and financing been available.
27. Owner remains actively engaged in pursuing the expeditious development of the Project and we have been working closely with DDOT to try to expedite the close out of the DDOT Project.
28. If Owner loses the entitlements granted by the Board of Zoning Adjustment under the Orders, the efforts to implement the Project, and to redevelop the Fort Totten area in a concerted fashion, will be even further hampered. The extension of the Orders would alleviate some uncertainty, and allow the Project to move forward.

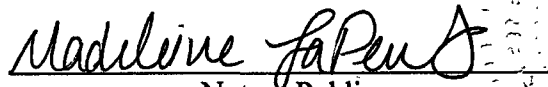
I hereby swear and affirm under penalty of perjury that the statements made in the foregoing affidavit are true and correct to the best of my knowledge, information, and belief.

On behalf of **Fort Totten South, L.L.C.**

By: 

Name: Matt Kelly

Subscribed and sworn to before me this 3rd day of May 2013.


Notary Public

My Commission expires: 5/11/16
[Notarial Seal]

**BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA**

Application of
Fort Totten South, LLC

*
*
*
*

Board of Zoning Adjustment Case No. 17606-D

Affidavit of Dakota Square, LLC

The undersigned, being duly sworn according to law, deposes and says:

1. I am over 18 years of age and competent to testify in this matter.
2. I am the Senior Vice President of Dakota Square, LLC ("**Dakota Square**"), success in interest to Dakota Points, LLC (the original applicant in BZA Case No. 17606), and development partner of Fort Totten South, LLC ("**Owner**"), and the original applicant under Board of Zoning Adjustment Case Nos. 17606 and 17606-B relating to 5543-5575 South Dakota Avenue, N.E. (Lot 22 in Square 3760) ("**Property**").
3. Dakota Square purchased the Property in 2007 and transferred it to Owner in September 2010. Prior to such date, Dakota Square had development responsibility for the project approved under the Order.
4. I am the Washington, DC-based principal in charge of the project on the Property for Dakota Square.
5. As Principal in Charge, I am responsible for efforts relating to designing, constructing, and financing the building at the Property for Dakota Square ("**Project**").
6. Since the date of the prior extension by the BZA Order No. 17606-C (the "**Order**"), April 12, 2011, Dakota Square, along with Owner, have been diligently proceeding in good faith with the Project. However, the construction of the Project as approved by the Order has not yet been feasible.

DDOT Road Realignment and Intersection Construction

7. Since 2006, DDOT has been planning the reconfiguration and reconstruction of the South Dakota Avenue, Riggs Road, and 3rd Street, NE, intersection (the "**Intersection**") and portions of 3rd Street, Chillum Place, and Kennedy Street, NE (the "**DDOT Project**").
8. The DDOT Project was initially planned to begin in Spring of 2008 and be completed by fourth quarter of 2009. Such timing of the DDOT Project would have allowed for the submission for a building permit for the Project by the expiration date of BZA Order No. 17606.
9. Since the initial approval of BZA Order No. 17606, the DDOT Project has been delayed numerous times and the completion date has been repeatedly pushed back. Delays on the DDOT Project are directly linked to the ability of Owner (and its predecessor) to implement the Orders by beginning construction, or even apply for a building permit.

10. Although the DDOT Project was intended to commence in Spring 2008 and reach completion approximately sixteen to eighteen months later, such work did not start until March 2010 and construction activity only recently reached substantial completion in the fourth quarter of 2012.
11. While the construction work on the DDOT Project has been substantially completed, the DDOT Project has not yet been closed out, since the plat to close the South Dakota Avenue ramp has not been recorded, among other items.
12. DDOT's delays were in large part due to significant, largely unexpected utilities and infrastructure located within the DDOT Project area that required significant redesign and removal and replacement efforts.
13. Three of the larger utility conflicts that significantly impacted the schedule of the DDOT Project were:
 - The South Dakota Avenue junction chamber which was located unexpectedly in the DDOT Project area in November 2010 and resolved in August 2011. The resolution of this utility required the involvement of DC WASA, which led to the requirement for additional approvals and delay.
 - The 24" gas and 48" storm sewer lines on 3rd Street, NE which were unexpectedly located in May 2011 and caused significant delay. The resolution of these utilities required the involvement of Washington Gas, which led to the requirement for additional approvals and delay.
 - The 8" gas and 15" sanitary sewer lines on South Dakota Avenue, NE which were unexpectedly located in September 2010 and resolved in July 2011. The resolution of these utilities also required the involvement of Washington Gas, which led to the requirement for additional approvals and delay.
14. The delay of the DDOT Project led to two problems for the implementation of the Project: (a) the Property was inaccessible over the course of the DDOT Project, and (b) more importantly, the final boundaries for the Property have been indeterminable until the completion of the DDOT Project. The Project has been delayed until the completion of the DDOT Project.
15. Regarding the boundaries of the Property, the DDOT Project closed the ramp connecting Riggs Road and South Dakota Avenue, NE. The effect of such closure is not yet known since the plat to close the ramp has not been recorded. Therefore, the closed land area has not been finalized and the boundaries of the Property are not yet completely known.
16. Development at the Property could not have reasonably proceeded until the DDOT Project was finished. It would not be reasonable to expect any developer to finalize a set of construction drawings that would allow for the submission of a building permit application or to proceed with the construction of the Project on any portion of the Property, if there is a possibility that the overall development will be further delayed and the boundaries of such property are not known. Changes to such boundaries might alter the design of the building or the site plan associated with the structure.
17. The DDOT Project affected the ability to develop both the "Fort Totten North" project – located immediately northwest of the Property and subject to BZA Order No. 17600,

17600-A, and 17600-B – and the “Fort Totten South” Project. Affiliates of Owner and Dakota Square began to implement the project at Fort Totten North as soon as possible, which will allow the Fort Totten South Project to begin earlier. Financing has been obtained for the Fort Totten North project and it is under construction. We note that the Fort Totten North property was also not as landlocked as the Property and that the South Dakota Avenue ramp closure affected the boundaries of the Property in a way that the boundaries of the Fort Totten North lot were not affected.

Phasing/Good faith efforts

18. Development on the Property has always been contemplated as a phased project, with the development of Fort Totten North preceding activity at Fort Totten South.
19. An affiliate of Owner, Fort Totten North, LLC, proceeded to submit for a building permit under the BZA Orders affecting the Fort Totten North project in 2012, once the DDOT Project progressed closer to completion and other District approvals, such as Large Tract Review (“LTR”) approval, were obtained. The LTR process lasted significantly longer than planned by the development team.
20. As discussed above, plans to redevelop Fort Totten North were delayed by factors outside of Owner’s or Dakota Square’s control. For instance, negotiations with DDOT over Fort Totten North and the LTR process proceeded more slowly than anticipated. In combination with the delays described above relating to the DDOT Project, these delays with Fort Totten North had a domino effect, delaying the timeline for the Project on the Property as a consequence.

Financing Efforts

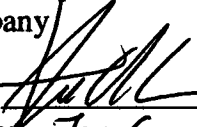
21. Due to the delays and uncertainty created by the DDOT Project, no lender would commit to funding such project until they also know that the Project was proceeding with certainty. Therefore, Owner and Dakota Square could not be expected to construct the building approved by the Orders until the DDOT Project was complete
22. In the Summer of 2008, Dakota Square interviewed several brokers to assist in financing the Project. Ultimately, Dakota Square selected Cassidy/Turley to solicit financing interest in the Project.
23. In October 2008, Dakota Square and Cassidy/Turley circulated their solicitation to partner for debt or equity financing of the Project. The development team was not successful in obtaining financing for the Project as a result of this effort.
24. In late 2008, Dakota Square retained the services of Studley to assist 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.
25. Then the development team again attempted to obtain financing in 2010. As a result, Dakota Square selected The JBG Companies to partner with it to capitalize the Project in September of 2010.
26. Further financing, including a construction loan, has not yet been able to be arranged due to the uncertainty of the Project resulting from the DDOT Project.

Conclusion

27. Since 2007, the development team has been meeting with various District agencies, including the Office of the Deputy Mayor for Planning and Economic Development, and DDOT to garner feedback on the Project.
28. The development team would have made application for building permits and commenced construction on the previously approved plan as soon as practicable following the issuance of the Order had the DDOT Project and the Fort Totten North project not been delayed and financing been available.
29. Dakota Square remains actively engaged in pursuing the expeditious development of the Project, as part of Owner, and we have been working closely with DDOT to try to expedite the close out of the DDOT Project.
30. If the Project loses the entitlements granted by the Board of Zoning Adjustment under the Orders, the efforts to implement the Project, and to redevelop the Fort Totten area in a concerted fashion, will be even further hampered. The extension of the Orders would alleviate some uncertainty, and allow the project to move forward.

I hereby swear and affirm under penalty of perjury that the statements made in the foregoing affidavit are true and correct to the best of my knowledge, information, and belief.

Dakota Square, LLC, a Delaware limited liability company

By: 

Name:

Joe Carral

Title:

Senior Vice President

Subscribed and sworn to before me this 3 day of May 2013.



Notary Public

My Commission expires: 3/14/2018
[Notarial Seal]

