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July 7, 2009

VIA HAND DELIVERY

D.C. Zoning Commission
441 4th Street, N.W.
Suite 210-S
Washington, DC 20001

#06-01A

**Re: Application for Extension of Time – Zoning Commission Order No. 06-01
3rd and H Streets, N.E. (Square 776, Lot 54)**

Dear Members of the Commission:

On behalf of Steuart-H Street LLC, the successor in interest of the applicants in the above-referenced application (the "Applicant"), this letter serves as a request for a two-year extension of the effectiveness of Zoning Commission Order No. 06-01 (the "PUD Order"), a copy of which is attached hereto as Exhibit A. Under Condition No. 13 of the PUD Order, a building permit must be filed for the approved planned unit development ("PUD") no later than October 12, 2009, and construction of the approved PUD must commence no later than October 12, 2010. The requested extension would extend those deadlines to October 12, 2011 and October 12, 2012, respectively. The required PUD extension application form (Form 107) is attached hereto as Exhibit B. We have also enclosed a check in the amount of \$400.00 for the required filing fee.

This extension request is filed pursuant to Section 2408.10 of the Zoning Regulations, which authorizes the Zoning Commission for the District of Columbia (the "Commission") to extend the time limits otherwise applicable to an approved PUD upon a written request by the applicant. In exercising its authority to extend the validity of a PUD under Section 2408.10, the Commission must determine that: (1) the extension request has been served on all parties to the original application, and that those parties have been provided at least thirty days in which to respond to the request; (2) that there has been no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justifications for approving the original PUD; and (3) that the applicant has shown good cause for the extension request in accordance with the considerations set forth in Section 2408.11 of the Zoning Regulations. 11 DCMR § 2408.10.

ZONING COMMISSION
District of Columbia

CASE NO.

06-01A

ZONING COMMISSION

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EXHIBIT NO.

District of Columbia

CASE NO. 06-01A

EXHIBIT NO. 1

EXHIBIT NO.1

I. Introduction

A. Factual Background

On January 6, 2006, the Applicant filed an application with the Commission seeking consolidated review and approval of a PUD and related map amendment for property located in the Northeast quadrant of the District of Columbia in the square bounded by 3rd Street to the west, I Street to the north, 4th Street to the east, and H Street to the south. The subject property includes all of Lot 54 (formerly Lots 9, 25-31, 51-53, 800, and 821) in Square 776 and contains approximately 60,871 square feet of land area. Pursuant to the PUD Order, effective October 12, 2007, the Commission granted consolidated approval of the PUD, as well as a map amendment from the C-2-A District to the C-2-B District for a portion of the subject property.

As approved, the PUD contemplated the construction of a mixed-use development containing approximately 287,930 square feet of gross floor area. The approved project will provide approximately 228 apartment units and approximately 46,579 square feet of gross floor area devoted to retail and service uses, including a regional grocery store of approximately 41,000 square feet. The building will be constructed to a maximum height of ninety feet and will have a floor-area ratio ("FAR") of 4.8.

B. Jurisdiction of the Zoning Commission

Section 2408.10 of the Zoning Regulations authorizes the Commission to extend the validity of previously approved PUDs. That subsection sets forth the requirements that must be met in order for the Commission to grant such an extension, providing in relevant part that:

[t]he Zoning Commission may extend the periods set forth in §§ 2408.8 and 2408.9 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; provided, that the Commission determines that the following requirements 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 in which to respond;
- (b) There is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justifications 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.

11 DCMR§ 2408.10. Pursuant to Section 2408.10, the sole substantive criterion for determining whether a PUD should be extended is whether the applicant has demonstrated good cause for the extension. Section 2408.11 of the Zoning Regulations defines "good cause" as follows:

For purposes of § 2408.10(c), an extension of validity of a PUD may be granted by the Commission for good cause shown if an applicant has demonstrated with substantial evidence one or more of the following criteria:

- (a) An inability to obtain sufficient project financing for the PUD, 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 PUD by the expiration date of the PUD 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, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order.

11 DCMR § 2408.11. As discussed in detail below, there is substantial evidence that the present extension request meets the requirements of Sections 2408.10 and 2408.11.

II. All Parties to the Original Application Have Been Served with this Request

In addition to the Applicant, the only other party to the Commission's proceedings on the original PUD application was Advisory Neighborhood Commission ("ANC") 6C. As indicated on the attached certificate of service, ANC 6C is being served with a copy of this extension request and will have at least thirty days in which to comment on the request before it is considered by the Commission.

III. The Applicant Has Shown Good Cause for the Requested PUD Extension

A. The Project Has Been Delayed by Economic Circumstances beyond the Applicant's Reasonable Control

Section 2408.11(a) supports the approval of a PUD extension for projects confronting difficulties that are caused by economic or market conditions beyond the reasonable control of the applicant. Furthermore, Section 2408.11(c) allows the Commission to grant such extensions based upon "such other condition, circumstance, or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order." 11 DCMR § 2408.11(c). As the Commission is aware from public statements made by numerous experts on the economy and as widely reported in the media, the District of Columbia and the United States are in the most significant economic downturn in decades. Despite the Applicant's diligent good faith efforts, there is simply no financing for the proposed project at this time. The Applicant has, over the past two years, sought financing from a number of different sources and has been unable to obtain the necessary commitments to allow the project to proceed at this time. In addition, the Applicant has encountered particular difficulties in securing a tenant for the required grocery store space. The Applicant intends to move forward with the approved project as soon as sufficient financing is obtained.

B. There Has Been No Substantial Change in Any of the Material Facts upon which the Commission Relied in Approving the Application

The proposed project has not changed in any form. The requested extension is needed to allow the Applicant additional time in which to secure the financing necessary to proceed with the project as approved. There have been no substantial changes in the material facts upon which the Commission relied in approving the application, and the Applicant intends to comply with all of the conditions set forth in Zoning Commission Order No. 06-01.

In approving the application that is the subject of this extension request, the Commission reviewed the consistency of the approved PUD and related map amendment with the various provisions of the 1998 Comprehensive Plan. As the Commission is aware, the 1998 Comprehensive Plan was subsequently superseded by the 2006 Comprehensive Plan. As discussed below, however, the subject property's current designation on the Future Land Use Map, as well as the specific policies and objectives set forth in the 2006 Comprehensive Plan, provide even greater support for the approved PUD and map amendment than the prior land use designation upon which the Commission relied in approving the application.

The Generalized Land Use Map of the 1998 Comprehensive Plan designated the subject property for mixed-use development consisting of moderate-density residential and low-density commercial land uses. The Future Land Use Map of the 2006 Comprehensive Plan, on the other hand, designates the subject property for mixed-use development including medium-density residential uses and moderate-density commercial uses. In other words, the property's current land use designation is fully consistent with the approved PUD and C-2-B zoning. In addition, the proposed project and related map amendment to the C-2-B District will promote the policies set forth in the applicable elements of the 2006 Comprehensive Plan. The subject property is also located within the H Street / Benning Road Policy Focus Area, which calls for precisely the type of mixed-use development contemplated by the approved PUD.

C. No Public Hearing Is Necessary to Grant the Requested Extension

Section 2408.12 of the Zoning Regulations provides that:

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

11 DCMR § 2408.12. The subject property is located within the boundaries of ANC 6C, which supported the original PUD application. The Applicant has discussed this extension request with representatives of ANC 6C and is unaware of any material factual conflict that would create the need for a public hearing in this case.

IV. Conclusion

We believe that the facts recited above provide sufficient basis under Section 2408 for the Commission to grant a two-year extension of Zoning Commission Order No. 06-01, and we respectfully request that the Commission grant such an extension. Because there are no material factual conflicts in this case, the Commission may grant this extension without holding a public hearing on the request, and we request that the Commission do so at its earliest convenience.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: Norman M. Glasgow Jr. / JTD
Norman M. Glasgow, Jr.

By: Jeffrey T. Johnson
Jeffrey T. Johnson

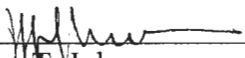
Attachments.

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2009, a copy of the foregoing Request for Extension of Time, Zoning Commission Order No. 06-01 (Square 776, Lot 54), was served via hand delivery on the following:

Advisory Neighborhood Commission 6C
Karen J. Wirt, Chair
234 E Street, N.E.
Washington, DC 20002

Jennifer Steingasser
D.C. Office of Planning
2000 14th Street, N.W.
4th Floor
Washington, DC 20009



Jeffrey T. Johnson