

January 23, 2009

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HAND DELIVERY

District of Columbia Zoning Commission
441 4th Street, NW
Second Floor
Washington, DC 20001

Re: Zoning Commission Order No. 06-34A
Request for Extension of Time and Minor Modification
1705-1729 East Capitol Street, SE
Square 1096, Lots 51, 52, 53, 54, and 55 (the "Property")

06-34A
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Dear Members of the Zoning Commission:

On behalf of LAT PYD I (the "Applicant"), owner of the Property, we submit this request for a one (1) year extension of the above-referenced planned unit development and Zoning Map amendment, 06-34 (collectively, the "PUD"), such that a building permit application must be filed no later than December 14, 2010 and construction must start no later than December 14, 2011. This request is filed pursuant to §2408.10 of the Zoning Regulations for good cause shown herein. A copy of Order No. 06-34 is enclosed as Exhibit A.

This letter request supplements the request you received from PGN Architects, PLLC, on behalf of the Applicant, by letter dated September 24, 2008, seeking a minor modification to the PUD in order to increase the number of residential units provided in the new construction (from 133 to up to 141 units). The modification request (Zoning Commission No. 06-34A) is made pursuant to the Zoning Commission's authority established in §§ 2409.9 and 3030 of the Zoning Regulations.

The Applicant respectfully requests that the Zoning Commission consider these requests for extension and minor modification at its February 23, 2009, special public meeting.

I. INTRODUCTION

By Order No. 06-34, the Zoning Commission approved a consolidated planned unit development and map amendment (from R-4 to R-5-B) to allow construction on the Property of a 133-unit apartment building containing approximately 112,599 square feet of gross floor area, building density of 2.64 FAR, and maximum building height of 49.9 feet. The Applicant obtained the Property from Comstock East Capitol, LLC, in December 2007.

The Applicant remains fully committed and intent on moving forward with this important redevelopment opportunity. Nonetheless, given certain circumstances that the Applicant has encountered

since the Commission's Order was issued, detailed below, the Applicant respectfully requests additional time to file for a permit and to start construction of the building, as well as the Commission's approval to modify the layout of the project to allow for an increase in the number of residential units provided.

II. JURISDICTION OF THE ZONING COMMISSION

A. Extension of Time

Section 2408.10 of the Zoning Regulations authorizes the Zoning Commission to extend the dates of validity for 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:

The 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 Zoning 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 to respond;
- (b) There is no substantial change in any of the materials 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.

Pursuant to §2408.10, 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 follows:

2408.11 For purposes of Paragraph 2408.10(c), an extension of the validity of a planned unit development may be granted by the Zoning 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 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.

B. Minor Modification

Section 2409.9 of the Zoning Regulations authorizes the Zoning Commission to approve those proposed modifications to an approved PUD that are beyond the limited scope of authority granted to the Zoning Administrator. Furthermore, §3030 of the Zoning Regulations provides for an expedited "Consent Calendar" procedure, allowing the Zoning Commission to make minor modifications and technical corrections to an approved PUD Order without need for a public hearing. Pursuant to §3030.2, "minor modifications" are those modifications of little or no consequence.

III. THE APPLICANT DEMONSTRATES GOOD CAUSE FOR EXTENSION AND MINOR MODIFICATION OF THE PUD

A. Project Has Experienced Delay Beyond Applicant's Control

Section 2408.11(c) of the Zoning Regulations allows for extensions based upon a "condition, circumstance 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." The instant Application satisfies this criterion and thus deserves extension of the validity of the PUD.

The Applicant acquired the Property in December 2007, as the national real estate market, especially residential real estate, was beginning to show signs of slowing after years of expansion. The Applicant moved forward with its acquisition given the Property's gateway location and the great potential for redevelopment of the site, which has remained vacant for many years. Subsequent to the Applicant's acquisition of the Property, the region's real estate market has witnessed further precipitous deterioration, impacted dramatically by the freezing of debt markets in the summer of 2008.

The Applicant's plan upon acquiring the Property was to move forward with construction of the approved project immediately. However, as a result of the dramatic market forces at work, and out of an abundance of caution in moving forward with such a sizeable project, the Applicant has spent the past several months reviewing the approved plans with the goal of providing the highest quality product at the most marketable and affordable level for potential homebuyers. This review, undertaken in consultation with the architects who designed the approved PUD, has led the Applicant to redesign the interior layout of the Project, thereby increasing the overall unit count from 133 units to up to 141 units. This redesign, which will have no impact on the exterior design or massing of the building, will actually increase the number of one and two bedroom units in the building and is expected to increase the marketability of the units and overall economic feasibility of the project. The Applicant is requesting an additional one (1) year extension for the validity of the PUD to allow it and its architects sufficient time to complete construction drawings to reflect the various changes needed to the interior of the building to allow for the increased unit count without impacting the design or massing of the overall project.

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 ...

The Project has not changed in any significant form. The use, height, density and other zoning parameters have not changed. Aside from the interior layout and unit count issues discussed above, the plans have not changed. The overall gross floor area of the project remains unchanged. The related amount of gross floor area devoted to affordable housing (approximately 9,008 square feet) likewise remains unchanged.

The short extension and minor modification are requested to address the pre-construction issues identified above in order to allow the Project to move forward to construction. These requests may be accomplished simply, through revision of Order No. 06-34 to reflect in the Findings of Fact (at Paragraph 11) that up to 141 residential units may be provided, and in the Decision (at Paragraph 1) that the PUD shall be developed in accordance with the plans currently referenced therein, as supplemented by revised plans submitted by PGN Architects, PLLC, pursuant to its letter to the Zoning Commission dated September 24, 2008 (Exhibit 1 to Case ZC 06-34A), at the Applicant's discretion. The Applicant will provide a proposed Order reflective of these proposed revisions under separate cover, with copies to Advisory Neighborhood Commissions (ANC) 6A and 6B.

C. No Hearing is Necessary

Section 2408.12 of the Zoning Regulations provides that "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." Likewise, §3030 of the Zoning Regulations provides for an expedited "Consent Calendar" procedure for minor modification and technical correction requests, without need for a public hearing.

In the present case, the Applicant is not aware of any material factual conflict generated as a result of the PUD. Further, the Applicant has presented its request for minor modification to ANC 6B, which has indicated, by letter to the Zoning Commission dated December 10, 2008 that it has no objection to the request. The Applicant has copied both ANC 6B and ANC 6A on the present request explaining the reasons for its requests for extension and minor modification and will be pleased to discuss the requests further with these organizations should they so desire.

As such, no public hearing is needed or required.

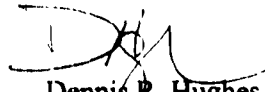
IV. CONCLUSION

In light of this demonstration of good cause and for the reasons stated herein, the Applicant respectfully requests that the PUD be extended for one (1) additional year before an application for building permit must be filed. The Applicant further requests approval of its request for minor modification to increase the number of residential units provided (to 141 units) with no resulting

changes in the overall height, density, exterior appearance or finish, amount of parking and loading or other aspects of the approved project. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP



Dennis R. Hughes

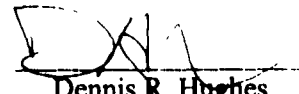
Attachment

CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached letter was hand delivered this 23rd day of January, 2009, to the following:

Advisory Neighborhood Commission 6A
c/o Joseph Fengler, Chairman
815 F Street, NE
Washington, DC

Advisory Neighborhood Commission 6B
c/o Julie Olson, Chair
320 G Street, SE
Washington, DC



Dennis R. Hughes