

September 28, 2018

Via IZIS

Frederick L. Hill, Chairperson
D.C. Board of Zoning Adjustment
441 4th Street, N.W., Second Floor
Washington, D.C. 20001

**Re: Board of Zoning Adjustment Order No. 19099 – 3701 New Hampshire Avenue,
N.W. – Request for Time Extension**

Dear Chairman Hill and Members of the Board:

On behalf of RP 3701 NW LLC (the “**Applicant**”), the applicant for variance relief to construct a mixed-use building with ground floor retail and residential uses above in the GA/C-3-A Zone District at 3701 New Hampshire Avenue, N.W. (Square 3030, Lot 30¹) (the “**Property**”), we hereby submit this application to request a two (2) year time extension of BZA Order No. 19099 (the “**Order**”).

An authorization letter from the Applicant is attached hereto as Exhibit A. A copy of the Order is attached hereto as Exhibit B. This request is made pursuant to Subtitle Y § 705.1 of the Zoning Regulations. Enclosed with this letter is a check for the applicable filing fee of \$540.80, which represents 26% of the original filing fee.

I. SUMMARY

Pursuant to the Order, the Board granted variance relief from the parking and lot occupancy requirements of the Zoning Regulations to construct a mixed-use building at the Property with ground floor retail and 21 residential units above (the “**Project**”). The final date of the Order was September 30, 2016 and the Order was valid for two year period. Therefore, the Order expires on September 30, 2018.

Since the issuance of the Order, the Applicant has been working in good faith to move forward with the Project. Among other items, the Applicant spent this last two years working with its architect, development team, other engineers and consultants, and its joint venture partner preparing final design to develop the Project. The Applicant has been actively working towards obtaining a building permit for the Project from the Department of Consumer and Regulatory

¹ We note that Lot 805 was subdivided into Record Lot 30 since the Order was issued.

Affairs (“DCRA”). Such ongoing work shows the Applicant’s good faith efforts to move forward with the Project.

However, as described below and on the affidavit from the Applicant attached as Exhibit C, the finalization and construction of the Project as approved by the Order has been delayed due to construction costs and difficulties, the effects of the WMATA “Zone of Influence,” and the exploration of joint ventures and other complications. Clearly, these elements are beyond Owner’s control.

As a result of the above, the Applicant requests a two (2) year extension of the Order.

II. APPLICANT’S REQUEST

The Order will expire on September 30, 2018. With this letter, we request, pursuant to 11-Y DCMR §705.1, that the Board extend the approval by a period of two (2) years until September 30, 2020. As described more fully below, good cause exists for the Board to grant this extension request.

III. BZA STANDARD FOR APPROVING AN EXTENSION REQUEST

11-Y DCMR §705.1 sets forth clear standards by which the Board must evaluate extension requests. Upon receipt of this written request, the Board may extend the time period of an Order “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 (1) or more of the following criteria: (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.

For reasons set forth more fully below, the Board should find that good cause exists to grant this extension request because of construction costs and complexities, the WMATA “Zone of Influence” and other conditions and circumstances beyond the Applicant’s reasonable control.

IV. THE EXTENSIONS MEET THE REQUIREMENTS OF SUBTITLE Y § 705.1 (A), (B), AND (C)

The Applicant meets all of the requirements for the granting of an extension under 11-Y DCMR §705.1, as set forth below.

A. Extension Request Served on All Parties to the Application

In the instant case, this extension request is being served simultaneously on all parties to the original application for BZA Case No. 19099, which includes the ANC 4C and ANC 1A. The parties to the application will be allowed thirty (30) days to respond to this request.

This request is also being served on the Office of Planning and the Department of Transportation.

B. No Substantial Change to Any of the Material Facts

The factors satisfying the variance relief for the Property remain as they were for the Board's approval of the requested relief. There has been no substantial change in any of the material facts relating to the case. The relief is still appropriate because there is an extraordinary and exceptional situation at the Property due to which the strict application of the Zoning Regulations for parking and lot occupancy would result in a practical difficulty for the Applicant, and the relief will not cause substantial detriment to the public good or substantial impairment of the intent, purpose, and integrity of the Zoning Regulations and Zoning Map.

C. Good Cause for the Extension

As detailed on the affidavit signed by the Applicant and attached hereto as Exhibit C (the "Affidavit"), the Applicant has provided good cause for the approval of the requested extension due to a variety of conditions and circumstances outside of its control.

The Applicant has been actively working towards obtaining a building permit for the Project from DCRA. However, due to multiple issues beyond the Applicant's control, moving forward with the building permit and the construction of the Project prior to the Order's expiration date is not feasible.

As stated on Exhibit C, the factors delaying the implementation of the Project include the significant and steady increase in construction costs in the Washington, D.C. area since the Order's issuance. These costs have greatly exceeded expectations due to geopolitical factors, among other reasons. As a result, as stated in the Affidavit, the construction costs estimates for the Project have increased by more than 30% beyond the original construction forecasts. Such construction cost increase is further exacerbated by the physical site constraints at the Property, including its small and triangular shape and multiple street frontages (and the existing structures on site) that create significant and unusual construction complexities at the site.

Even further augmenting these complications, the Property's proximity to the Georgia Avenue/Petworth Metrorail station and the Metrorail line means that the Property is within a Washington Metropolitan Area Transit Authority ("WMATA") "Zone of Influence". Due to its location within the Zone of Influence, any construction at the Property must, understandably, be reviewed and coordinated with WMATA to ensure that WMATA improvements are not damaged or adversely impacted by the Project. As described on Exhibit C, the Property's location in this Zone of Influence has introduced a separate and unique design and oversight process that has required re-study and revisions of various aspects of the Project in order to address WMATA comments. This process has significantly contributed to the delay in finalizing the Project design.

Since the issuance of the Order, the Applicant has been investigating unique ways to implement the approved Project. To that end, the Applicant has reached out to potential joint venture partners to explore various Project delivery approaches. As described on Exhibit C, the Applicant entered into a joint venture partnership with Community Three in order to help finalize and construct the Project. While Community Three will help move the Project forward, the process of negotiating an agreement for the joint venture and the related due diligence process introduced delay in moving forward towards Project construction. However, the Applicant's search for and partnering with this joint venture partner provides evidence of good faith actions undertaken to best position the development team to deliver the Project.

Despite the above challenges, following the issuance of the Order, the Applicant spent a great deal of time working with its architect, engineering consultants, and financial and market consultants preparing to design and develop the Project. During such time, the Applicant has been actively working towards obtaining a building permit for the Project from DCRA. In fact, pursuant to information provided on Exhibit C, since the Order was issued, the Applicant has spent approximately \$370,000 and significant time and resources to study, design and implement the Project.

As stated on Exhibit C, the Applicant has also solicited interest from, and had numerous discussions with, potential operators of the retail portion of the Project. These discussions are ongoing but indicate further good faith actions to implement the Project, as approved, since the issuance of the Order.

V. CONCLUSION

As noted above, given the Applicant's good faith efforts to finalize plans and move forward with the Project, which have been delayed by numerous factors outside of the Applicant's control, including the significant increases in construction costs, delay due to physical site constraints, working to find development partners for the site, and a variety of challenges relating to the site, there is good cause for this two (2) year time extension.

If this requested extension is approved, the Applicant intends to work with its joint venture partner to finalize the plans and work toward obtaining the building permit in good faith during the extended validity period for the Order. Conversely, if the Applicant loses the entitlements

Mr. Frederick Hill, Chairperson
September 28, 2018
Page 5

granted by the BZA under the Order, the efforts to bring the Project to fruition will be even further hampered. The Applicant believes that with the additional time requested, the Project will be able to proceed.

We would be happy to produce any other information or evidence in support of the above letter and greatly appreciate your consideration of this matter.

Sincerely,

A handwritten signature in blue ink that reads "Jeff C. Utz". The signature is written in a cursive style with a large initial "J".

Jeff C. Utz

A handwritten signature in blue ink that reads "Meghan Hottel-Cox". The signature is written in a cursive style with a large initial "M".

Meghan Hottel-Cox

Certificate of Service

I certify that on September 28, 2018, I delivered a copy of the foregoing document via hand delivery or U.S. mail to the addresses listed below.

Jennifer Steingasser (2 copies)
Joel Lawson
Office of Planning
1100 4th Street, SW, Suite 650E
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Anna Chamberlin (2 copies)
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Meghan Hottel-Cox