

49<sup>th</sup> Street Developer LLC  
440 East Maple Avenue, Suite 203  
Vienna, VA 22180

*December 19, 2018*

**VIA IZIS**

Mr. Frederick L. Hill, Chairperson  
D.C. Board of Zoning Adjustment  
One Judiciary Square  
441 4<sup>th</sup> Street, NW, Room 220  
Washington, D.C. 20001

Re: BZA Order No. 18916-B; Request for Extension of Order

Dear Chairperson Hill and Members of the Board:

On behalf of 49<sup>th</sup> Street Developer LLC, the Applicant and Contract Purchaser of Lots 1-8, Square 5348 (the “Property”), we submit this application to request an extension of the expiration date of BZA Order No. 18916-B. This request is made pursuant to § Y-705 of the Zoning Regulations. Enclosed with the on-line filing of this letter on IZIS is the Fee Calculator Form (BZA form 126) showing the applicable \$130.00 filing fee pursuant to § Y-1601.1(e). The Applicant requests a waiver this fee based on the enclosed waiver request letter from the Deputy Mayor for Planning and Economic Development (“DMPED”), which is Exhibit 8 in the record of Case No. 18916.

I. Summary

The Carver Terrace development project consists of two components: a three-story, 178 unit rental apartment building for seniors and 21, for sale, row houses. This request affects both components. The project received BZA approval in February 2015 (see attached BZA Order 18916). However, the project was not included by DHCD in the affordable housing funding rounds for fiscal years 2015 and 2016. After not obtaining funding in these rounds, the Applicant again submitted its application to the Department of Housing and Community Development (“DHCD”) for the 2017 and 2018 funding rounds. Although a portion of the project was selected for funding, that process is only in its early stages at DHCD. The project cannot be constructed without such District government funding.

The Applicant now requests a two-year extension of Order No. 18916-B for the following reasons:

- (a) The project cannot move forward to the permitting stage until the requisite funding is authorized and awarded for the Carver Terrace project.

- (b) At this point in time, funding is not finalized for the project with respect to the proposed Fiscal Year 2019 budget.
- (c) The Applicant is working with DMPED on an effort to identify funding sufficient to move the project forward and those discussions are on-going.

## II. Property Owner's Request

The Applicant, on behalf of the Property owner requests that, pursuant to Section Y-705 of the Zoning Regulations, the BZA extend the time limits relating to BZA Order No. 18916-B and allow the Carver Terrace Order to remain effective for two more years until February 19, 2020.

## III. BZA Standard for Approving an Extension Request

Section Y-705.1 sets forth clear standards against which the Board must evaluate extension requests. Upon receipt of this written request, the Board may extend the time period of the Carver Terrace Order "for good cause shown." The Board must determine that:

- (a) This extension request is served on all parties to the application, and all parties are allowed thirty (30) days to respond;
- (b) There is no substantial change of any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application; and
- (c) The Applicant demonstrates that there is good cause for such extension, with substantial evidence for any one (1) 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 other such condition, circumstance, or factor beyond the applicant's reasonable control."

For the reasons set forth more fully below, the Board should find that good cause exists to grant this extension request because of "an inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control" and because the Applicant was unable to "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."

## IV. Service on All Parties to the Application

This extension request has been properly served on all parties to the underlying application. There are no substantial changes to any material facts upon which the Board originally approved the application.

V. Satisfaction of “Good Faith” Standard for Evaluation of Extension Request

The Applicant is seeking an extension from the BZA as the result of a unique combination of factors that have restrained the project from moving forward. These combined factors constitute the “good cause” necessary for the Board to extend the Carver Terrace Order.

A. DHCD’s Funding Process

The District of Columbia Government (the “District”) did not fund the Applicant’s previous requests for funding in the 2015 through 2017 funding rounds which has required the Applicant to re-submit in 2018. This has caused substantial delay in the Carver Terrace project. The affordable housing cannot be constructed without such funding from the District. Recently, the Applicant received the enclosed letter from DHCD indicating that the townhomes portion of the project was selected to advance to the next stage of underwriting. This process with DHCD for the 21 townhomes portion of the project is on-going. However, funding for 178 unit rental apartment building for seniors portion of the project is yet to be approved by DHCD.

B. Economic and Market Conditions

The Applicant has been working with DMPED and DHCD to obtain financing for the entire project. The costs of construction of affordable housing are such that the project cannot be constructed without such funding. The Applicant re-submitted funding applications to DHCD in June 2018 and is waiting to hear from DHCD as to what portions of the project will advance or require re-submittal in the 2019 round.

C. Good Faith Effort to Move Forward

When evaluating this extension request, the Board should also consider the Applicant’s good faith and diligent efforts to move forward with development on the Property. The Applicant has every intention of proceeding with this project, and it continues to work on the subdivision of the property into buildable lots pending approval of District funding.

VI. Extension Meets the Requirements of §§ Y-705.1(a), (b) and (c)

In addition to the good cause described above, further factors support the approval of the requested extension as described 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. 18916, which includes the Office of Planning, DDOT and

ANC 7E. The parties to the application will be allowed thirty (30) days to respond to this request. In addition, this extension request will not prejudice any party. There are no neighbors or structures that would be adversely affected as the result of granting this extension request. In fact, because the project will provide sorely needed affordable housing, the eventual construction of the project that results from the extension request will have a substantially positive effect on the neighbors and the community.

B. No Substantial Change to Any of the Material Facts

The factors satisfying the special exception relief for the Property remains 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 project remains as a substantial commitment to building affordable housing east of the Anacostia River.

C. Conformance with the Comprehensive Plan and Zoning Regulations

This request for a waiver for good cause shown under Section Y-705.1 of the Zoning Regulations for an extension of time within which to complete the project<sup>1</sup> is consistent with the intent and purposes of the Zoning Regulations, the requirements of Chapter 7 of Title Y of the Zoning Regulations, and the District of Columbia Comprehensive Plan ("Plan") for the National Capital. The Land Use Map of the Plan designates the site for Moderate Density Residential use. The Plan's land use designation of the Property has not changed since the Carver Terrace Order was approved. Further, the Plan's policies and goals still support the project on the Property and would support an extension of time for the Carver Terrace Order.

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

Sincerely,  
49<sup>th</sup> Street Developer LLC

By: \_\_\_\_\_/s/\_\_\_\_\_  
Tim Chapman

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<sup>1</sup> By filing plans for proposed structure for the purpose of obtain the necessary permit(s) from DCRA and carrying out the construction of the buildings approved by the Carver Terrace Order on the Property

### **Certificate of Service**

I hereby certify that on December \_19\_, 2018, a copy of the Supplemental Submission was served on the following:

ANC 7E  
5001 Hanna Place, SE  
Washington, DC 20019  
(Electronically 7E@anc.dc.gov)

Ms. Maxine Brown-Roberts  
D.C. Office of Planning  
(Electronically maxine.brownroberts@dc.gov)

Anna Chamberlin  
D.C. Department of Transportation  
(Electronically anna.chamberlin@dc.gov)

\_\_\_\_\_/s/\_\_\_\_\_  
Tim Chapman