

February 5, 2016

VIA HAND DELIVERY

Anthony Hood, Chairperson
D.C. Zoning Commission
Office of Zoning
441 4th Street, N.W., Suite 210
Washington, DC 20001

**Re: ZC Case No. 13-05: Request to Extend Consolidated and First-Stage PUD
(Square 744S, part of Lot 805, and Square 744SS, part of Lot 801)
("Property")**

Dear Chairperson Hood and Members of the Commission:

Forest City Washington ("**Applicant**" or "**Forest City**"), developer of the above-referenced Property pursuant to a Land Disposition Agreement with the District of Columbia, hereby requests a two-year extension of (1) the consolidated PUD approval for the F1 Parcel and (2) first-stage PUD approval for the remaining parcels. The consolidated and first-stage PUD was initially approved pursuant to Zoning Commission Order No. 13-05, effective February 7, 2014 ("**Order**") (attached as Exhibit A). The consolidated approval is set to expire on February 6, 2016, and the Applicant respectfully requests a two-year extension of the consolidated PUD to February 7, 2018.

Similarly, the Applicant seeks a corresponding two-year extension of the first-stage approval. The Commission has the authority to extend the first-stage PUD under Section 2407.10 of the Zoning Regulations, which states "[t]he first-stage approval shall be valid for a period of one year, unless a longer period is specified by the Commission, or unless the Commission extends that period." The initial PUD approved a period of 12 years for the first-stage PUD from the effective date of the order, by which the Applicant would need to file for second-stage PUD approval for each of the G1, G2, and G3 Parcels. This 12-year time period is also inclusive of the time it would take to secure permit approval for and construct the F1 Parcel. Here, the Applicant requests that the 12-year clock run from the effective date of the proposed extension order.

A. Jurisdiction of the Zoning Commission

The Commission is authorized to extend a PUD time period provided that:

- “The extension request is served on all parties to the application by the applicant and all parties are allowed thirty (30) days to respond;
- 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 justification for approving the original PUD; and
- The applicant demonstrates with substantial evidence that there is a good cause for such extension...”

(Sections 2408.10(a) – (c))

In order to demonstrate “good cause shown,” the applicant must demonstrate:

- “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;
- 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
- 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.”

(Sections 2408.11(a) – (c))

B. Background and Affirmative Actions Taken

The Property that is the subject of this PUD is owned by the District of Columbia and used by DC Water for various operations related to its utility service, such as its fleet maintenance and customer care operations. Development of the first phase of the PUD cannot proceed until some of DC Water’s operations have been relocated, and development of the remaining phases cannot proceed until all of DC Water’s operations have been relocated.

Since the approval of the PUD, the following measures have been accomplished with respect to the PUD (see affidavit attached as Exhibit B):

- Negotiation and execution of a Land Disposition Agreement with the District of Columbia to authorize the disposition of the Property to Forest City;
- Negotiation and execution of the lease with Showplace Icon, the movie theater operation.
- Identification, negotiation, and closing on a relocation site for DC Water's Fleet Maintenance operation;
- Identification of a relocation site for DC Water's Customer Care operation; and

C. Satisfaction of Standard

The requested extension satisfies the standard delineated in Sections 2408.10 and 2408.11, as follows:

1. The extension request is served on all parties to the application by the applicant and all parties are allowed thirty days to respond.

This request is being served on ANC 6D and DC Water, the only parties to the original application, on the same day as it is filed with the Zoning Commission. Forest City asks that the Commission not place this request on its meeting agenda until the thirty day period has lapsed.

2. 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 justification for approving the original PUD.

There has been no substantial change in any material facts upon which the Commission based its original approval. The Comprehensive Plan designation and zoning designation for these parcels remains unchanged since the original approval in 2014.

3. The applicant demonstrates with substantial evidence that there is good cause for such extension.

As demonstrated by the attached affidavit (Exhibit B), Forest City's failure to file the building permit for the F1 Parcel within the requisite period of time is due to continuing challenges in identifying and developing appropriate relocation facilities that are acceptable to DC Water. DMPED and DC Water have worked diligently—with continued assistance from Forest City—to identify appropriate relocation facilities for DC Water's Fleet Maintenance and Customer Care operations, but substantial work still remains.

- For the Fleet Maintenance operations site, DMPED and DC Water are currently negotiating an agreement on the scope of improvements to be built out at the new site.

Once an agreement is reached, the improvements must be designed, permitted, and built.

- For the Customer Care operations site, DMPED is working with WMATA to acquire a property that would serve as a new location, and the parties are actively discussing the terms of the site control with DC Water. Once the parties reach agreement on the acquisition of the site, they will still need to address the scope, design, and construction of the new facilities.

DMPED and DC Water estimate that relocation of one of the two operations could be completed within 10 months; however, out of an abundance of caution and in recognition of the complex negotiations and construction required to facilitate the relocation, the Applicant requests a two-year extension. Once DC Water has relocated operations from the F1 Parcel, environmental remediation of the site must be completed, and then Forest City will be able to proceed with construction of the F1 Building. Relocation of the remaining DC Water operations will allow Forest City to proceed with the remaining phases.

Although responsibility for relocation is solely with DMPED and DC Water, Forest City has worked closely with both agencies to support their efforts. Forest City meets regularly with both entities, offers its services related to cost estimating and development, and continues to offer a potential interim relocation of DC Water operations to The Yards until permanent improvements are built out.

Notwithstanding the unanticipated delays in DC Water's relocation, Forest City has moved forward with advancing the design of the F1 Parcel to accommodate the operational needs and code requirements for the movie theater and parking garage. Forest City is also refining the design of the building to (a) ensure the delivery of a successful project within the terms of the executed LDA; and (b) coordinate the design and operation of the F1 Parcel with DC Water's proposed office headquarters to the south.

Once issues regarding DC Water relocation have been addressed and the construction of the F1 building is completed, Forest City will then be able to turn its attention to the continued development of the second-stage PUDs, permitting, and construction of the remaining parcels.

D. Conclusion

Forest City has been diligent in its efforts to pursue the development rights afforded by the PUD approval. The relocation of DC Water's operations, however, is a complicated process outside of Forest City's control. Forest City is progressing with development of the F1 Parcel, but needs additional time to accommodate the delays associated with relocation efforts. Accordingly, Forest City seeks approval for a two year extension of the consolidated portion of the PUD to February 7, 2018, and a two year extension for the first-stage PUD such that the 12-year clock for filing all second-stage PUDs run from February 7, 2016.

Anthony Hood, Chairperson
District of Columbia Zoning Commission
February 5, 2016
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Sincerely,

A handwritten signature in black ink, appearing to read "David M. Avitabile", with a long horizontal flourish extending to the right.

David M. Avitabile

cc: Sarah Forde, Forest City Washington
John Lecker, Forest City Washington

CERTIFICATE OF SERVICE

On February 5, 2016, I caused a copy of the foregoing letter and enclosure to be delivered by hand or by electronic mail to the following:

Karen Thomas
D.C. Office of Planning
1100 4th Street, SW, Suite E650
Washington, DC 20024

ANC 6D
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Anna Chamberlin
Policy and Planning
District Department of Transportation
55 M Street SE, 5th Floor
Washington, DC 20009

For DC Water:
Kyrus Freeman
Holland & Knight
800 17th Street NW
Washington, DC 20006

A handwritten signature in black ink, appearing to read "David Avitabile", written over a horizontal line.

David Avitabile