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May 25, 2016

VIA IZIS AND HAND DELIVERY

Zoning Commission of the
District of Columbia
441 4th Street, N.W., Suite 210-S
Washington, DC 20001

Re: Request for Extension of Time to File a Building Permit for Z.C. Order No. 13-10 (Consolidated Planned Unit Development & Zoning Map Amendment @ Square 2892, Lots 102, 103, 104, 105, 879, and 910)

Dear Members of the Zoning Commission:

On behalf of ZP Georgia, LLC (the "Applicant"), this letter serves as a request for a two-year extension of the time period in which to file a building permit for Lots 102, 103, 104, 105, 879, and 910 in Square 2892 (the "Subject Property"). If approved, a building permit application must be filed no later than June 27, 2018, and construction must begin no later than June 27, 2019.

This extension request is filed pursuant to section 2408.10 of the Zoning Regulations for good cause shown herein. A completed application form for the extension is attached hereto as Exhibit A, and a check in the amount of \$520.00 made payable to the DC Treasurer for the requisite filing fee pursuant to 11 DCMR § 3040.5 is also enclosed.

I. INTRODUCTION

A. Factual Background

Pursuant to Z.C. Order No. 13-10, having an effective date of June 27, 2014, the Zoning Commission approved applications for a consolidated planned unit development ("PUD") and related Zoning Map amendment from the GA/C-2-A District to the GA/C-2-B District for a mixed-use retail and residential project at the Subject Property. Z.C. Order No. 13-10 required that an application for a building permit must be filed no later than June 27, 2016, and that construction must begin no later than June 27, 2017. A copy of Z.C. Order No. 13-10 is attached hereto as Exhibit B.

ZONING COMMISSION
District of Columbia
CASE NO.13-10A
EXHIBIT NO.1

The approved PUD includes approximately 96,000 square feet of gross floor area devoted to residential uses (105 units, plus or minus 10%) and approximately 3,816 square feet of gross floor area devoted to retail uses. A minimum of 8% of the building's residential gross floor area was required to be set aside as Inclusionary Zoning ("IZ") units consistent with Chapter 26 of the Zoning Regulations. The building was approved with a maximum height of 87 feet. Thirty-six on-site parking spaces were approved to be located in a below-grade parking garage.

B. Jurisdiction of the Zoning Commission

Pursuant to Section 2408.10 of the Zoning Regulations, the Zoning Commission is authorized to extend time periods set forth in 11 DCMR § 2408.8 (two year requirement to file a building permit application) and 11 DCMR § 2408.9 (three year requirement to begin construction), provided the following conditions 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 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; and
- (c) The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in Section 2408.11.

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 11 DCMR § 2408.11, as evidence of one or more of the following:

- (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.

II. THIS EXTENSION REQUEST WAS SERVED ON ALL PARTIES

The Applicant has served this request for an extension of time on all parties to the initial PUD application, allowing them the required time period to respond, as evidenced by the Certificate of Service attached hereto.

III. THERE IS GOOD CAUSE FOR THE EXTENSION OF THE PUD VALIDITY

A. The Project Has Experienced Delay Beyond the Applicant's Control

Section 2408.11(c) of the Zoning Regulations authorizes the Commission to grant an extension of PUD validity for projects where the applicant has demonstrated with substantial evidence "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." The current application satisfies this criteria and thus meets the requirements for an extension of the validity of the PUD as follows.

Following the Commission's vote to approve Z.C. Order No. 13-10, a lawsuit was filed in the Superior Court of the District of Columbia on June 17, 2014 against the Applicant regarding development of the Subject Property. *See* Case No. 2014 CA 003733 B. The lawsuit was brought by Mr. Romeo Morgan who participated as a party in opposition in the Zoning Commission case. As a result of the pending litigation, the Applicant suspended all development work pending resolution of the lawsuit.

As indicated in the letter attached hereto as Exhibit C from Mr. Christopher Glaser, litigation counsel for the Applicant, and as shown on the court docket attached to the letter, the trial for the lawsuit commenced on May 23, 2016, at which point the Court dismissed the case. Mr. Morgan has 30 days from entry of the Order (which has not yet occurred) to appeal. Following resolution of the lawsuit and any appeal, the Applicant will be able to move forward with preparing construction drawings, obtaining bids from general contractors, and taking other steps necessary for development of the Subject Property in accordance with Z.C. Order No. 13-10. The Applicant anticipates that it will be able to file a building permit application for the project by June 27, 2018 and to start construction by June 27, 2019.

As a result of this pending litigation, the Applicant is unable to comply with the time limits set forth in the PUD order. Accordingly, this request for a time extension satisfies the sole criterion for good cause shown as set forth in 11 DCMR § 2408.11(c).

B. No Substantial Changes to Approved PUD

In addition to requiring the demonstration of "good cause," 11 DCMR § 2408.10 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 ...

In this case, there has been no substantial change in any of the material facts upon which the Zoning Commission based its approval of the original PUD. The Applicant remains committed to moving forward with developing the mixed-use, multiple dwelling building with ground floor retail, and fully complying with the conditions and obligations imposed as part of the original PUD approval.

C. No Hearing is Necessary

Section 2408.12 of the Zoning Regulations provides:

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.


A hearing is not necessary for this request since there are no material factual conflicts generated concerning any of the criteria set forth in 11 DCMR § 2408.11. There is no dispute that there is pending litigation that prevents the Applicant with proceeding with construction of the project at this time. Thus, there cannot be any material factual conflicts generated concerning any of the criteria by which the Zoning Commission is required to consider this request.

IV. CONCLUSION

In light of this demonstration of good cause and for the reasons stated herein, the Applicant respectfully requests that the Commission approve a two-year extension of time to file a building permit for property located at Lots 102, 103, 104, 105, 879, and 910 in Square 2892, such that an application must be filed for a building permit no later than June 27, 2018, and construction must begin no later than June 27, 2019. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP


Kyra L. Freeman
Jessica R. Bloomfield

Attachments

- cc: Jennifer Steingasser, Office of Planning (Via Hand Delivery; w/attachments)
- Steven Mordfin, Office of Planning (Via Hand Delivery; w/ attachments)
- Advisory Neighborhood Commission 1A (Via U.S. Mail; w/attachments)
- Bobby Holmes, Single Member District ANC 1A09 (Via U.S. Mail; w/ attachments)
- Donald M. Temple, Counsel for Mr. Romeo Morgan (Via U.S. Mail; w/ attachments)

CERTIFICATE OF SERVICE

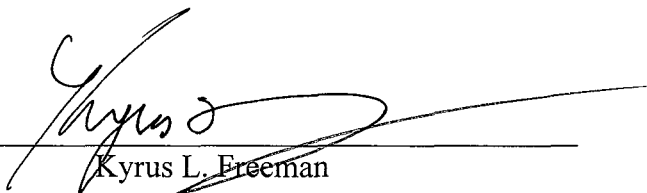
I hereby certify that on May 25, 2016, a copy of the foregoing Applicant's Request for Extension of Time was served by first class mail on the following at the address stated below:

Advisory Neighborhood Commission 1A
3400 11th Street, NW, #200
Washington, DC 20010

VIA U.S. MAIL

Donald M. Temple
Counsel for Mr. Romeo Morgan
1101 15th St NW, #910
Washington, DC 20005

VIA U.S. MAIL



Kyrus L. Freeman