

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

KYRUS L. FREEMAN
202-862-5978
kyrus.freeman@hklaw.com

August 11, 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 a Six Month Extension of Time to Start Construction
Z.C. Case No. 03-12P/03-13P

Dear Members of the Zoning Commission:

On behalf of Capper Carrollsburg Venture, LLC and the District of Columbia Housing Authority ("DCHA") (collectively the "Applicant"), this letter serves as a request for a six month extension of the time period in which to begin construction of the approved residential building on Square 769N (the "Residential Building"), which was preliminarily approved pursuant to Z.C. Order No. 03-12/03-13, received final approval pursuant to Z.C. Order No. 03-12G/03-13G, and was extended pursuant to Z.C. Order Nos. 03-12L/03-13L and 03-12P/03-13P. This request, if approved, would require construction of the Residential Building to begin no later than February 14, 2017.

In submitting this application, the Applicant requests a waiver from Subtitle Z § 705.5 of the 2016 Zoning Regulations, which provides that an "applicant with an approved PUD may request no more than two (2) extensions. The second request for an extension may be approved for no more than one (1) year." In this case, the project for which we are seeking an extension was approved prior to the adoption of the 2016 Zoning Regulations, and the Commission has previously approved two extensions for the PUD. However, as described below, the Applicant has already filed a building permit application for the approved building, and the extension requested herein is only for six months in order to obtain the building permit, close on financing, and begin construction. Thus, a waiver from Subtitle Z § 705.5 is appropriate in this case.

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 Section 3040.5 of the Zoning Regulations is also enclosed.

ZONING COMMISSION
District of Columbia
CASE NO.03-12T/03-13T
EXHIBIT NO.1

A. Factual Background

Pursuant to Z.C. Order No. 03-12/03-13 (Exhibit B), dated February 6, 2004 and effective on October 8, 2004, the Zoning Commission granted preliminary and consolidated approval of a Planned Unit Development (“PUD”) for property located in the southeast quadrant of Washington, DC and generally bounded by Virginia Avenue to the north, 7th Street to the east, M Street to the south, and 2nd Street to the west. The overall PUD consists of approximately 927,000 square feet of land area.

Pursuant to Z.C. Order No. 03-12G/03-13G (Exhibit C), dated June 8, 2009 and effective on August 14, 2009, the Zoning Commission granted second stage approval for the Residential Building. The Zoning Commission approved the Residential Building to have approximately 181,420 square feet of gross floor area, a maximum height of 110 feet, a minimum of 34 affordable dwelling units, and a minimum of 152 off-street parking spaces in the garage. Pursuant to Z.C. Order Nos. 03-12L/03-13L and 03-12P/03-13P (Exhibits D and E, respectively), the Zoning Commission granted extensions for approval of the Residential Building, such that a building permit was required to be filed no later than August 14, 2015, with construction to begin no later than August 14, 2016.

As documented in the affidavit of Victoria Davis attached hereto as Exhibit F, since receiving the previous time extensions, the Applicant has worked diligently to move forward with development of the Residential Building. The Applicant filed the required building permit application materials prior to August 14, 2015 in order to vest the most recent PUD extension approval. However, the Applicant is experiencing delay in starting construction due to the extensive and lengthy process involved in obtaining the required building permits from the Department of Consumer and Regulatory Affairs (“DCRA”), and the scope of work necessary to address all permitting comments and requirements. Moreover, the stormwater management requirements for the Residential Building are unique and require much more review and coordination than traditional stormwater management agreements with DOEE. Finally, although financing has been secured for the project, the final building permit authorizing construction has not been issued yet, which is a condition to closing. Thus, the Applicant requests a six month time extension, such that construction of the PUD must begin no later than February 14, 2017.

B. Jurisdiction of the Zoning Commission

Section 2408.10 of the Zoning Regulations authorizes the Zoning Commission to extend the time periods set forth in Section 2408.8 (two year requirement to file a building permit application) and Section 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 Section 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.

C. This Extension Request Was Served On All Parties

Other than the Applicant, the only parties to this case were Advisory Neighborhood Commission ("ANC") 6B and ANC 6D. As indicated on the Certificate of Service attached hereto, the Applicant has served this request for an extension of time on ANC 6B and ANC 6D.

D. There Is Good Cause Supporting the Extension of the PUD Validity

1. The Project Has Experienced Delay Beyond Applicant's Control

Section 2408.11(a) authorizes the grant of an extension of PUD validity for projects confronting difficulties with financing based upon changes in economic and market conditions beyond an applicant's control. In addition, Section 2408.11(b) authorizes the grant of a PUD extension based on an inability to secure all required governmental agency approvals because of delays in the governmental agency approval process that are beyond the applicant's reasonable control. In this case, the Applicant is unable to begin construction of the Residential Building based on the factors set forth in both Sections 2408.11(a) and (b), as detailed below.

a. Inability to Close on All Project Financing

Despite the Applicant's diligent, good faith efforts to move forward with the project, the Applicant will not be able to obtain complete project financing for the Residential Building in order to begin construction by August 14, 2016. As set forth in the affidavit of Victoria Davis attached hereto as Exhibit F, the Residential Building is a public-private partnership between the Applicant and DCHA. The residential component includes 80% of the units at market rate, and 20% of the units reserved for households earning as little as 0% of the Area Medium Income. With respect to the affordable housing component, the Applicant has secured a Letter of Commitment

with the Department of Housing and Community Development ("DHCD"). A Letter of Commitment for construction debt is anticipated to be executed by August 15, 2016 with Citibank, and a Letter of Commitment for tax credit equity is anticipated to be executed by August 15, 2016 with The Richman Group. With respect to the market rate component, a Letter of Commitment for construction debt is anticipated to be executed by August 16, 2016 with Citibank, and a Memorandum of Understanding for EB-5 preferred equity was executed on September 25, 2015 with Live in America, LLC. Of the \$14 million in EB-5 preferred equity, \$12.5 million has already been secured and placed in escrow. (See Letter prepared by Gallagher Evelius & Jones attached hereto as Exhibit G).

However, the additional six months requested herein is necessary to provide time for the Applicant to receive the final building permit, which will then enable the Applicant to close on the remaining financing and to commence construction. Accordingly, based on the substantial evidence provided above and included in Exhibit F, this request for an extension satisfies the sole criterion for good cause shown as set forth in Section 2408.11(a) of the Zoning Regulations.

b. Inability to Secure All Required Governmental Agency Approvals

As indicated in the affidavit of Victoria Davis (Exhibit F), since receiving the most recent extension approval, the Applicant has worked diligently to move forward with the Residential Building. The affidavit details the substantial efforts to date undertaken to move forward with development of the project, including the preparation and submission of multiple plans and studies, the filing of various permit applications with DCRA, the execution of a series of contracts with vendors, and multiple meetings to address all the steps required to obtain a building permit for the project.

As stated above, the final building permit authorizing construction of the Residential Building has not been issued yet, and issuance of a letter from DCRA confirming that the final building permit is available pending permit fee payment is a condition to closing. Once the building permit is issued and the Applicant closes, it will be able to mobilize the construction team to break ground and begin construction on the project immediately.

The Applicant is committed to moving forward with construction of the Residential Building. To date, the Applicant has invested more than \$1.8 million in the Subject Property for legal, architectural, engineering, financing, permitting, and other consulting fees, and has committed another \$725,000.00 of funding to complete pre-development and prepare for construction. Thus, there is no financial incentive for the Applicant to not move forward with this application as planned.

2. No Substantial Changes to Approved PUD

In addition to requiring the demonstration of "good cause," Section 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...

This extension is requested in order to enable the Applicant to continue its diligent efforts to secure the necessary project financing and obtain all required building permits. Moreover, there has been no substantial change in any of the material facts upon which the Zoning Commission based its approval of the Residential Building, and the Applicant remains committed to moving forward with the project and fully complying with the conditions and obligations imposed as part of the PUD approval.

3. No Hearing is Necessary

In addition, 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.

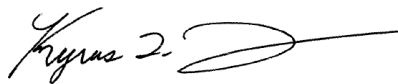
A hearing is not necessary for this request since there are no material factual conflicts generated concerning any of the criteria set forth in Section 2408.11. There is no dispute that the Applicant has been unable to (i) secure the necessary project financing for the project at this time, and (ii) obtain all required building permits. 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.

E. Conclusion

In light of this demonstration of good cause and for the reasons stated herein, the Applicant respectfully requests that the Zoning Commission approve a six month extension of time such that construction of the Residential Building in Square 769N must begin no later than February 14, 2017. No hearing is necessary as there are no material factual issues in question

Respectfully submitted,

HOLLAND & KNIGHT LLP



Kyrus L. Freeman
Jessica R. Bloomfield

Attachments

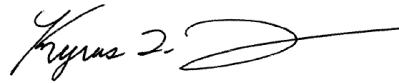
Cc: Stephen Cochran, D.C. Office of Planning (With Attachments, Via Hand Delivery)

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2016 a copy of the foregoing Applicant's Request for an Extension of Time was served by electronic mail and U.S. Mail on the following at the address stated below:

Advisory Neighborhood Commission 6B
921 Pennsylvania Avenue SE
Washington, DC 20003
6B@anc.dc.gov

Advisory Neighborhood Commission 6D
1101 4th Street SW, Suite W130
Washington, DC 20024
office@anc6D.org

A handwritten signature in black ink, appearing to read "Kyrus L. Freeman", is written over a horizontal line.

Kyrus L. Freeman