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VIA IZIS AND HAND DELIVERY

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

Re: Request for Extension of Time for First-Stage PUD Approval of the East and West M Street Office Buildings, Zoning Commission Order No. 02-38A/02-38C

Dear Members of the Zoning Commission

On behalf of Waterfront 375 M Street, LLC and Waterfront 425 M Street, LLC¹ (collectively, the "Applicant") in the above-referenced planned unit development ("PUD"), this letter serves as a request for an extension of time of the first-stage PUD approval of the East and West M Street Office Buildings approved in Zoning Commission Order No 02-38A ("Order No. 02-38A"). According to Order No 02-38A, a second-stage PUD application for East M Street Office Building must be filed no later than April 15, 2015. According to Zoning Commission Order No 02-38C ("Order No 02-38C"), which approved an extension of Order No 02-38A, a second-stage PUD application for West M Street Office Building must be filed no later than April 15, 2015. As set forth herein, the Applicant requests an extension of that timeframe for both buildings. A copy of Order No. 02-38A is attached as Exhibit B, and a copy of Order No 02-38C is attached as Exhibit D.

This request is filed pursuant to Sections 2407.11 and 2408.10 of the Zoning Regulations for good cause shown herein. A completed application for the extension is attached as Exhibit A. The Applicant respectfully requests that the Zoning Commission consider this request at its February 9, 2015, public meeting.

ZONING COMMISSION
District of Columbia

CASE NO 02-38E

EXHIBIT NO 2

¹ The original applicants in this case were Waterfront Associates LLC and the District of Columbia. The subject properties for which the extensions are requested are now owned by Waterfront 375 M Street, LLC and Waterfront 425 M Street, LLC.

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I. INTRODUCTION

A. Factual Background

By Order No 02-38A, the Zoning Commission approved a modification to a first-stage PUD ("First-Stage PUD"), a second-stage PUD ("Second-Stage PUD") and a zoning map amendment for the property located at 401 M Street, S.W , known as Record Lot 89² in Square 542 ("the Property") The Property consists of approximately 584,655 square feet of land in the "superblock" generally bounded by M, I, 3rd and 6th Streets, S W The Property is zoned C-3-C by virtue of the zoning map amendment related to the PUD

The First-Stage PUD provides for the development of eight buildings including residential, office and ground floor retail uses and includes significant open spaces as well as the re-opening of the 4th Street right-of-way The Second-Stage PUD included the four buildings through the center of the Property and their adjacent open spaces, including the re-opening of 4th Street These four buildings include the East and West 4th Street Office Buildings, with ground floor retail space and a Safeway grocery store, which flank the east and west sides of 4th Street, and the East and West Residential Buildings, which have a continuous open space connecting them to 4th Street.

Condition No 28 of Order No 02-38A approved the Second-Stage PUD for a period two years from the effective date of the order, which was January 25, 2008 Within such time, the applicant was required to file for a building permit as specified in 11 DCMR § 2409.1. Construction was required to begin within three years of the effective date of Order No 02-38A. The applicant applied for building permits for the East and West 4th Street Office Buildings, which were both issued on July 17, 2008, and the applicant commenced construction in September, 2008 Construction of these two office buildings were completed in March, 2010

By Zoning Commission Order No 02-38B, a copy of which is attached as Exhibit C, the Zoning Commission approved a two-year extension of the Second-Stage PUD with respect to the East and West Residential Buildings That order required that the applicant file for a building permit no later than January 25, 2012, and commence construction by January 25, 2013 The developer of those buildings filed building permits for both the East and West Residential Buildings in advance of January 25, 2012 Construction commenced on the East and West Residential Buildings in early 2012 The East Residential Building is fully constructed and 95% occupied. The West Residential Building is fully constructed, and leasing is expected to commence in early 2015

Condition No 29 of Order No 02-38A provided that the approval for the First-Stage PUD was valid for a period of five years from the effective date of the order (i.e., January 25, 2008) Accordingly, the second-stage PUD application(s) for the Northwest Building, the Northeast Building, and the West M Street Office Building were required to be filed by January

² Record Lot 89 in Square 542 has been divided into Lots 822, 825 through 834, and 872 for assessment and taxation purposes The West M Street Office Building will be developed on Lot 826 in Square 542, and the East M Street Office Building will be developed on Lot 825 in Square 542

25, 2013 These second-stage applications were permitted to be submitted individually, at the same time, or in any combination thereof The timeframe for filing the second-stage PUD application for the East M Street Office Building was separate and was based upon the date that Safeway vacated the premises, which was April 15, 2010 Accordingly, the Second-Stage PUD application for the East M Street Office Building must be filed within five years of that date (i.e., April 15, 2015).

A second-stage PUD application for the Northwest Building was submitted in December, 2012, and approved by Zoning Commission Order No 02-38D ("Order No 02-38D") Condition No 18 of Order No 02-38D states that an application for a building permit must be filed for the Northwest Building no later than December 6, 2015, and construction must start by December 6, 2016 The full building permit application for the Northwest Building was filed in August, 2014 Construction is scheduled to commence in January, 2015

The Applicant requests that the Commission consider an extension of the timeframe by which it must file second-stage PUD applications for the East and West M Street Office Buildings for a period of two years The District of Columbia is the owner of Lot 822 in Square 549 on which the Northeast Building will be built This application does not include a request for extension of the First-Stage PUD for that parcel

B. Jurisdiction of the Zoning Commission

Section 2407.10 of the Zoning Regulations states that a first-stage PUD approval shall be valid for a period of one year, unless a longer period of time is specified by the Commission, as was done in this case Section 2407.11 states that rights granted by a first-stage PUD may be extended by the Commission in accordance with the standards and process for second-stage PUD extensions set forth in Sections 2408.10 through 2408.12. Specifically, 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 for a building permit) 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 §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 §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. THE EXTENSION REQUEST WAS SERVED ON ALL PARTIES

The parties to this case included Advisory Neighborhood Commission 6D ("ANC 6D"), Tiber Island Cooperative Homes, Inc., and Carrollsburg Square Condominium Association. As indicated on the Proof of Service included with this filing, the Applicant has served this request for extension of time on all parties to the initial PUD application, allowing them the required time period to respond.

III. THE APPLICANT DEMONSTRATES GOOD CAUSE FOR EXTENSION OF THE PUD VALIDITY

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

Section 2408.11(a) allows the Zoning Commission to grant an extension of PUD validity for projects confronting difficulties with financing based upon changes in economic and market conditions beyond an applicant's control. While the real estate market has seen some improvement in recent years, especially for the development of residential use, there is a confluence of issues that continues to limit financing and leasing opportunities for commercial office projects in the Washington, DC region, which are discussed further below.

The Applicant has made significant progress on the overall development of the Waterfront Station project, including the following:

- Recordation of a PUD Covenant, dated as of January 25, 2008, and recorded on March 3, 2008, among the Land Records of the District of Columbia ("Land Records") as Instrument No. 2008023182, recordation of an Amended and Restated

PUD Covenant on August 21, 2008, among the Land Records as Instrument No. 2008089839, and recordation of a PUD Covenant for the Northwest Building, dated as of March 26, 2014, and recorded on May 21, 2014, among the Land Records as Instrument No. 2014045076

- Construction and occupancy of the East and West 4th Street Office Buildings in March, 2010. Both of these buildings achieved Gold LEED Certification
- Re-opening of 4th Street, S.W. through the Property and dedication of the public right-of-way easement in early 2010
- Construction of more than 50,000 square feet of public open spaces in accordance with Condition No. 11 of Order No. 02-38A
- Improvements to and maintenance of the District-owned park land to the north of the Property and adjacent to the churches fronting I Street, S.W.
- Opening of the Safeway Grocery Store on April 16, 2010.
- Leasing of over 94% of the available retail space in the East and West 4th Street Office Buildings, which includes 86,251 square feet of neighborhood-serving retail and service space. The retail space includes a grocery store, drug store, fast-casual and sit down restaurants, and a dry cleaner. The retail space also incorporates 12,632 square feet devoted to local and small businesses, which exceeds the requirement of 12,500 square feet set forth in Condition No. 14 of Order No. 02-38A
- Providing approximately 1,000 square feet of office and meeting space for community groups in the West 4th Street Office Building
- Completing construction of the East and West Residential Buildings. The East Residential Building is currently 95% occupied. Leasing of the West Residential Building is expected to begin in early 2015. In accordance with the commitments set forth in Condition No. 18 of Order No. 02-38A, at least 80,000 square feet of gross floor area is devoted to affordable housing in the East and West Residential Buildings, which equals 106 units
- Construction of the East and West 4th Street Office Buildings and the East and West Residential Buildings exceeded the proffered 35% Certified Business Enterprise requirement and satisfied all requirements of the First Source Employment Program, both as provided for in Condition No. 24 of Order No. 02-38A.
- Approval of a second-stage PUD for the Northwest Building, including approximately 365 residential units and a minimum of 5,304 square feet devoted to

retail use that can be divided up into four different retail spaces. With this additional retail space, the project provides 91,555 square feet of its minimum requirement of 110,000 square feet of retail use. Construction of the Northwest Building is scheduled to commence in January, 2015, with delivery in or around October, 2016. The Northwest Building is seeking Silver LEED Certification.

The result of these many steps is a mixed-use neighborhood town center that was envisioned at the time the overall PUD was approved.

While the Applicant wants to move forward with second-stage PUD applications for the East and West M Street Office Buildings at this time, the Applicant has faced great difficulty securing initial financing for the East and West M Street Office Buildings. This difficulty is due to the very limited market for initial financing of office buildings. As set forth in the letter from Steven Kurland, Senior Vice President of Forest City Financial Corporation, a copy of which is attached hereto as Exhibit E, banks in general require buildings to be at least 50-70% pre-leased prior to making construction loan commitments. Speculative projects (i.e., an office building with no tenants) are not moving forward with financing based on debt due to the lending environment remaining very tight.

As noted above, there is a confluence of issues that limits the ability of developers to secure the tenants that are required in order to secure financing. These issues include the following: Federal austerity and sequestration, the "Freeze the Footprint" policy issued for GSA which limits Federal agencies to their existing FY 2012 (or lower) square footage for leased space, the impact of BRAC which has shifted leasing from private space to government-owned space and has increased vacancy rates and created more competition from existing buildings in Maryland and Virginia; and increased vacancy and downward pressure on effective rents due to tenants reducing footprints and requiring less space. The result is very limited new office space being built, with new space primarily being developed for tenants with special requirements, a single, large tenant, or a tenant who needs more efficient space.

With this knowledge, the Applicant has taken numerous steps to actively market both the East and West M Street Office Buildings to potential tenants. As set forth in the Statement of Facts for Deborah Ratner Salzberg, the President of FC Waterfront Member, LLC, the Applicant has hired Vornado/Charles E. Smith as a leasing broker, and this leasing broker has conducted outreach to the brokerage community, listed the buildings with CoStar, provided marketing materials to potential tenants, and made presentations to large public and private sector tenants. A copy of the Statement of Facts is attached as Exhibit F, and a copy of the marketing materials for the project is attached as Exhibit G. The Applicant has also responded to multiple Requests for Proposals for potential tenants. The Applicant has recently submitted or is currently preparing ten separate responses to Requests for Proposals and unsolicited information packages to potential tenants in the market. The Applicant has not been successful in these efforts to date but remains optimistic and fully-engaged in marketing, leasing, and financing the East and West M Street Office Buildings.

Furthermore, as reported by CBRE in its Third Quarter 2014 Report for the office market in the District of Columbia, the District's vacancy rate for office buildings has climbed to 11.3% in the third quarter, which is an increase from 6.6% at the end of 2007 and from 10.2% at the end of March 2012, which is when the first extension for the West M Street Office Building was submitted. A copy of this Third Quarter 2014 Report is attached as Exhibit H. Given this vacancy rate, larger tenants have had more options for space, particularly space that is already built, thus reducing rents and taking the risk out of being a lead tenant for a new project such as the East and West M Street Office Buildings. While the Southwest Submarket has a vacancy rate of 9.9%, which is slightly lower than the city-wide rate, the CBRE Southwest Office Market View Third Quarter 2014 Report indicates that vacancy rate has experienced an upward trend since 2012 as several large users have consolidated or moved into owned space. A copy of the Southwest Office Market View Third Quarter 2014 Report is attached as Exhibit I. The requested extensions will enable the Applicant additional time to market, lease and secure financing to move forward with plans and development of the East and West M Street Office Buildings.

While the Applicant continues its efforts to market, lease and secure financing for these buildings, the Applicant also has sought ways to activate these parcels to fit in with the overall mixed-use neighborhood town center. The Applicant actively pursued locating the Kastles Tennis Stadium on the site for the summer of 2014, however, these efforts were not successful, and the site was not the ultimate location for the summer tennis league. The Applicant also actively engaged in negotiations with the Aya market, which is an innovated farmers market, but the Applicant was not successful in bringing this market to the site.

While some opportunities have not come to fruition, many unique activities have been hosted on the parcels. In September 2014, the Applicant sponsored a Bocce-n-Beers Charity Tournament & End of Season Party. In December 2014, the Applicant sponsored Fashion Trucks on the site of the West M Street Office Building. This program ran from December 16, 2014, through December 27, 2014, and offered a variety of fashionwear, shoes, accessories and unique finds for sale during the holiday season.

For 2015, the Applicant has allocated funds to host multiple events on the sites to create an active environment while it seeks to secure a tenant and financing for development. Furthermore, a representative of the Applicant is a member of the Board for the newly created Southwest BID and will be working closely with the Southwest BID on programming and events throughout Southwest and at this site.

As described above, the Applicant cannot move forward at this time with second-stage PUD applications for the East and West M Street Office Buildings, despite the Applicant's diligent, good faith efforts, because of continued issues with market conditions beyond the Applicant's control. Therefore, this request for extension satisfies the sole criterion for good cause shown as set forth in Section 2408.11(a) of the Zoning Regulations.

B. No Substantial Changes to Approved PUD

In addition to requiring the demonstration of "good cause," §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

The project has not changed in any form, and the extension is requested in order to enable the Applicant to continue its diligent efforts to market, lease and secure financing and tenants for the East and West M Street Office Buildings. Moreover, there has not been any change in any of the material facts upon which the Zoning Commission based its original approval of the PUD, 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

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

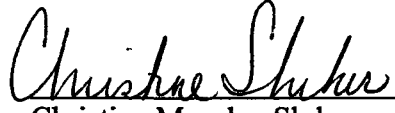
A hearing is not necessary for this request since there are not any material factual conflicts generated concerning any of the criteria set forth in §2408 11. The only parties to this case were ANC 6D, Tiber Island Cooperative Homes, Inc., and Carrollsburg Square Condominium Association, and the Applicant has served a copy of this request on each of them. There is no dispute that the Applicant has been unable to secure a lead tenant or secure initial financing for plan development of the East and West M Street Office Buildings. 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 and in the attached exhibits, the Applicant respectfully requests that the Commission approve an extension of the First-Stage PUD, such that second-stage PUD applications for the East and West M Street Office Buildings must be filed by no later than April 15, 2017. The Applicant further believes that no hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By 
Christine Moseley Shiker

Attachments

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