



GOVERNMENT OF THE DISTRICT OF COLUMBIA

Executive Office of the Mayor

Office of the Deputy Mayor for Planning and Economic Development

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Zoning Commission for the District of Columbia
c/o District of Columbia Office of Zoning
441 4th Street, NW, Suite 200-S
Washington, DC 20001

ZONING COMMISSION
District of Columbia

CASE NO. 02-38F

EXHIBIT NO. 2

Re Request for Extension of Time, Zoning Commission Order 02-38A/02-38C- "Northeast Building"

Dear Members of the Zoning Commission:

On behalf of the District of Columbia, acting by and through the Office of the Deputy Mayor for Planning and Economic Development ("DMPED"), owner of Lot 822 in Square 542 (the "District Parcel") as successor in interest to the RLA Revitalization Corporation ("RLARC"), and co-applicant in the above referenced planned-unit development ("PUD"), this letter serves as a request for a twenty-four (24) month extension of the first-stage PUD approval previously granted for the District Parcel by the Zoning Commission in Order No 02-38A (the "PUD Order"). The PUD Order was extended by the Zoning Commission in Order No 02-38C, which currently expires on April 15, 2015 (the "Extension Order").

This request is filed pursuant to Section 2407.10 of the Zoning Regulations for good cause shown (incorporating the standards contained in Section 2408.11 of the Zoning Regulations), as set forth 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 March 12, 2015, public meeting.

Background

In the PUD Order, effective January 25, 2008 and attached as Exhibit B, the Zoning Commission granted various zoning and PUD approvals for the property located at 401 M Street, SW, known at the time of the PUD Order as Lot 89 in Square 542 (the "Property")¹, to allow for the development and construction of a major mixed-use development project consisting of residential, office and retail uses. The Property consists of approximately 584,655 square feet of land in the "superblock" generally bounded by M, I, 3rd and 6th Streets, SW. Under a zoning map amendment pursuant to the PUD Order, the Property was zoned C-3-C.

The PUD Order granted the District Parcel first-stage PUD approval for the construction of a residential building, referred to in the PUD Order as the "Northeast Building", and provided that the first-stage approval would be valid for five (5) years from the effective date of the PUD Order, or

¹ Subsequent to the PUD Order, the Property was subdivided into thirteen (13) distinct assessment and taxation lots by plat dated May 7, 2008 for purposes of accommodating the development and construction of the Project, including the District Parcel, which consists of approximately 59,044 square feet in the northeast portion of the Property.

January 25, 2013 Under the PUD Order, DMPED was required to file a second-stage PUD application by that date See PUD Order, Condition No 29

On June 21, 2012, DMPED submitted a Request for Extension of Time for First-Stage PUD Approval of District Parcel This request sought to extend the first-stage PUD approval for a period of two years and three months, or April 15, 2015 The initial extension request was submitted in conjunction with the co-applicant, Waterfront 425 M Street, LLC, who sought a date of April 15 to align its PUD for the West M Street Office Building with the timeframe for filing the second-stage PUD application for the East M Street Office Building. That date was based upon the date that Safeway vacated the premises, or April 15, 2010

DMPED sought its first extension of the first-stage PUD due to the administrative burden of assuming responsibility for RLARC's portfolio and the effects of the recession of 2008 on the real estate market As the successor-in-interest to RLARC, DMPED assumed a series of responsibilities that required specialized expertise At that time, there were also resource constraints on DMPED associated with the transfer of RLARC's responsibilities Second, trouble in the financial markets from 2007-2009 had a severe impact on the local real estate market that directly impacted the ability to finance the affordability component of the District Parcel Specifically, the PUD Order requires that the District Parcel provide 80,000 gross square feet of affordable housing It was not possible to finance a project with this level of affordability at that time

In the Extension Order, a copy of which is attached as Exhibit D, the Zoning Commission approved the extension of the first-stage PUD for two years, requiring the applicants file a second-stage PUD application no later than April 15, 2015

Since the issuance of the Extension Order, the District has been actively engaging with the community to explore a development concept that would integrate the Southwest Neighborhood Library, which currently sits adjacent to the District Parcel on Wesley Place, into the Northeast Building Additionally, the District has worked to improve the utility and appearance of the District Parcel by improving it with a paved walkway, which is accessible to the public Due to this effort and for other good cause as set forth in more detail below, the District is hereby requesting a second extension of the first-stage PUD approval for the District Parcel and the time period within which to file a second-stage PUD application from April 15, 2015 to April 15, 2017, or twenty-four (24) months

Extension Request

Section 2407 10 of the Zoning Regulations allows the Zoning Commission to extend a first-stage PUD approval The past practice of the Zoning Commission has been to review applications for an extension of a first-stage PUD approval in accordance with the requirements and standards set forth in Sections 2408 10 and 2408 11 See Extension Order, Conclusions of Law Nos 1 and 2 These requirements and standards are specifically addressed as follows

(a) The extension request has been served on all parties to the application by the applicant, and all parties shall be allowed thirty (30) days to respond.

Concurrently with the filing of this extension request, copies of the request were served on all parties to the PUD, including Waterfront Associates, Advisory Neighborhood Commission 6D, Tiber Island Cooperative Homes, Inc , and Carrollsburg Square Condominium Association, allowing them the required time period to respond

(b) 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 not been any change in any of the material facts upon which the Zoning Commission based its original approval of the PUD. DMPED remains committed to moving forward with the development of the District Parcel in full compliance with the conditions and obligations imposed as part of the PUD approval. The residential development previously proposed and approved for the District Parcel remains consistent with the mixed-use element of the District of Columbia Comprehensive Plan and urban design and development objectives set forth in the PUD Order. More specifically, the proposal is consistent with the development of high-density residential uses, creation of affordable housing, and development of a mixed-use, transit oriented neighborhood. *See* PUD Order, Finding of Fact Nos. 90, 101-102, and 105. Furthermore, DMPED is prepared to release a solicitation for a development partner upon approval of this extension request.

(c) There is good cause for the granting of the extension request.

Section 2408.11 of the Zoning Regulations sets forth the criteria in determining whether “good cause” exists for granting an extension of the PUD time frames. Specifically, an applicant must demonstrate that it has met one or more of the following criteria:

- (a) 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,
- (b) 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
- (c) 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.

See 11 DCMR § 2408.11

Unlike private developers, the DMPED has unique obligations and constraints in solicitation, approval, and community engagement, which can result in delays in the development of a project that are beyond its reasonable control. While these obligations can result in a longer development timeline, they are seen by DMPED as a necessary part of the development process for District-owned property. DMPED actively engages with the community and other stakeholders to determine the best use of a site when selecting a development program. Often times there are opposing views and DMPED must work through a long process of community engagement to come to a conclusion as to the development plan that brings the greatest benefit to the public, advances the District's policy goals, and is feasible within the District's budget constraints. Additionally, when choosing a private development partner, DMPED engages in a competitive solicitation process, which includes a thorough public review and approval by the Mayor and the Council of the District of Columbia (the “Council”). As further discussed below, good cause exists to compel the Zoning Commission to grant this extension.

(1) The District worked with the community on a development concept that would integrate the Southwest Neighborhood Library in a new development on the District Parcel.

DMPED has spent much of the past two years working with other District agencies and the community to create a development concept that would integrate the Southwest Neighborhood Library into the Northeast Building. This concept was initially prompted by a change in the source of funding for renovation of the Southwest Neighborhood Library. During formulation of the FY13 budget, the Mayor and Council approved using proceeds from the sale of the Southwest Neighborhood Library parcel to construct a new library. This would require building a new library on its current site as part of a new mixed-use development or relocating the library to the District Parcel as part of the Northeast Building.

DMPED and the DC Public Library (“DCPL”) saw numerous benefits for the library, the District Parcel development, and the community by incorporating the library into the Northeast Building with the library entrance on 4th Street, SW. Relocating the library to 4th Street would increase access to library services by placing it on a commercial corridor less than one block from the entrance to the Waterfront Metro Station. This is in keeping with DCPL’s policy of creating more accessible neighborhood libraries. Placing the library entrance on 4th Street would increase foot traffic along 4th Street, thereby improving pedestrian traffic for the neighboring retail stores. Moving the library entrance to the east side of 4th Street would put it closer to Amidon-Bowen Elementary School and make it easier for students to access library services during and after school hours. In addition, incorporating the library into the District Parcel would save money and would prevent a disruption in library services as moving the library to 4th Street would allow the library to remain open during construction and alleviate the need for the construction of a temporary library facility. Finally, relocating the library to 4th Street would make it a more prominent part of the neighborhood rather than keeping it hidden from view in its current location on Wesley Place.

DMPED, DCPL and the Office of Planning, held a number of meetings with ANC 6D and the community in order to explore the option of moving the library to 4th Street. The District first approached ANC Commissioners Moffatt and Linsky in May 2013 with the concept. On August 26, 2013, DMPED met with the ANC, which requested that the District provide examples of other mixed-use libraries. On March 3, 2014, DMPED and the Office of Planning attended a meeting with the ANC commissioners to further discuss the concept and provide examples of libraries in mixed-use settings. At that meeting, the ANC requested that the District provide conceptual drawings to show what a library on 4th Street might look like.

DCPL commissioned CORE Architects to produce sketch-level studies of how to integrate the library into a development of the District Parcel while preserving its status as a community anchor. On June 4, 2014, the District held an initial community meeting at Amidon-Bowen Elementary School to inform the architects’ work on this concept with community views. On July 16, 2014, the District presented the conceptual drawings at a community meeting held at the Southwest Branch Library. See Exhibit E. Although a few members of the community were supportive of the idea, the majority of community members were committed to a stand-alone branch library on its current site. As a result, the District decided to move forward with a solicitation for development of the District Parcel based on the approved PUD Order. In spite of this decision, the District spent over a year working with community leaders to explore this development concept. As a result, the DMPED was not in a position to solicit a development partner and submit a second-stage PUD application before the Extension Order would

expire This delay was beyond reasonable control because it would have been unreasonable for DMPED, as a public land owner, not to give thorough consideration to a development concept that may have provided more public benefit and a more efficient use of public resources Further, in keeping with its obligation to the public it was incumbent for DMPED to give members of the community an opportunity to review and comment on the alternative development concept

(2) An Extension of the First-Stage PUD is necessary to accommodate the District's unique development process and to ensure delivery of public benefits such as affordable housing and local retail on the site.

With the library issue resolved, the District remains committed to developing the District Parcel in accordance with the PUD Order However, unlike a private developer, DMPED cannot readily obtain financing and begin construction Instead, DMPED must work with private development partners to complete the entitlement process, raise funding, and construct a building As a government agency, DMPED has a unique development process that is much longer than what a private developer would go through, but it is necessary to ensure transparency, fairness, and community participation in the process and to comply with District law

The selection process begins when DMPED issues a request for proposals from private developers, allowing up to 90 days for responses After receiving responses, a selection committee may ask for additional information from the responsive developers and may create a short list of candidates to submit a Best and Final Offer The selection committee may then meet with the developers on the short list and require them to make presentations of their proposals to the community The selection committee will weigh all of this information including the feedback it gets from the community in making its final decision After DMPED awards an exclusive right to negotiate to a respondent, DMPED and the developer must negotiate the remaining terms of the disposition of the site and draft a Land Disposition and Development Agreement (the "LDDA") Under D C Official Code §10-801, the District must submit the LDDA and accompanying legislation to Council for approval Under D C Official Code §10-801, the District's submission to Council must include an economic analysis, proof of community engagement, and meet numerous other statutory requirements Council has up to 90 days to approve a disposition of District-owned property It is only with Council approval that DMPED and its development partner can file the second-stage PUD application

Accordingly, given the length of the District's selection process and the requirements of District law, these delays are beyond reasonable control and necessitate the granting of an extension of the first-stage PUD The District is currently prepared to release a solicitation for development of the District Parcel and will do so immediately upon approval of this extension request

Conclusion

For the reasons set forth above, the District has met the criteria of Section 2408.10 and respectfully requests that the Zoning Commission grant its request to extend the first-stage PUD approval for the District Parcel from April 15, 2015 to April 15, 2017, a period of twenty-four (24) months The District believes that this extension will be sufficient to allow it to comply with the time requirements for filing a second-stage PUD application

As an additional matter, the District does not believe that a public hearing is required in connection with this extension request since, per Section 2408.12 of the Zoning Regulations, there is no material factual conflict with respect to the basis for the extension

Sincerely,



Brian Kenner
Acting Deputy Mayor for Planning and Economic
Development
Government of the District of Columbia

CC.

Sarosh Olpadwala (ODMPED)

Marc Bleier (ODMPED)

Jay Surabian (OAG)

Christine Shiker, Holland & Knight

Roger Moffatt, Advisory Neighborhood Commission 6D

Paul Greenberg, Tiber Island Cooperative Homes, Inc

Board of Directors, Carrollsburg Square Condominium Association