ZONING COMMISSION
FOR THE DISTRICT OF COLUMBIA

RE:	Application of Monument Residential LLC, on behalf of BRE/Watergate LLC, for Modification of Approved Planned Unit Unit Development (Square 8, Lot 807)	) ZC Case. No. 03-16

MOTION OF WATERGATE EAST, INC. TO POSTPONE HEARING

Introduction

Watergate East, Inc., ("WEI"), a Delaware Corporation, hereby moves for postponement of the hearing, presently scheduled for March 1, 2004, on the above-captioned application by Monument Residential LLC on behalf of BRE/Watergate LLC ("Applicant" or "Monument") for a modification to an approved Planned Unit Development ("PUD"). A postponement is necessary due to litigation initiated in the Court of Chancery of the State of Delaware by four dissident directors of WEI against WEI and its majority directors, to compel WEI to sell certain assets to Monument Residential LLC, and derivatively, to require WEI to support rather than oppose Monument's application to modify the PUD. The property owned by WEI that Monument seeks to purchase would provide additional parking for the project and, as such, is an important element of the Application. The lack of this basic information about the Project prevents the parties, the Office of Planning, and this Board from determining whether the application satisfies the PUD evaluation standards or the precise zoning relief required by the Applicant.

Further, due to uncertainty over the position of WEI, WEI cannot coordinate its case in opposition with other parties in opposition to the application, who have been allocated

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collectively one hour of time to present their case, due to the potential for conflicts with WEI if the dissidents' chancery suit is sustained. Accordingly, if postponement is denied, in light of the unique circumstances of WEI's conditional status as a party in opposition, WEI hereby requests that an additional one-half hour be allocated to WEI, in order to allow WEI sufficient time to effectively present its case in opposition.

Background

On January 15, 2004, WEI filed a timely motion to participate as a party in opposition to the above-captioned application, based on a vote taken by WEI's board of directors to oppose the application. In its motion, WEI advised this Board that WEI's membership had yet to vote on the related matter of Monument Residential LLC's offer to purchase approximately 44,000 square feet of space that is currently leased to the Watergate Hotel for use as parking in connection with Monument Residential's proposed luxury apartment building, but that the vote would take place prior to the hearing in the application, then scheduled for January 29, 2003. WEI's request advised this Commission of the possibility that WEI's opposition to the application might be withdrawn if the membership agreed to sell these assets to Monument, since the purchase agreement would then require, as a condition of the sale, for WEI to support the application.

On January 22, 2004, at a special meeting of the membership (shareholders) of WEI, the question of the sale of assets to WEI did not receive the approval of a majority of the total outstanding shares of WEI, although it did receive a majority of the votes of those shares present or voting by proxy. Based on this vote, WEI declined to sell its assets to Monument. WEI then prepared to present its case in opposition to application at the Zoning Commission hearing set for January 29, 2004.

At 12:41 p.m. on January 29, 2004, several dissident members of WEI's board of directors filed a complaint in the Delaware Court of Chancery naming six directors of WEI as defendants in an action under Delaware law for a determination that the membership voted at the January 22, 2004 to approve the sale of assets to Monument Residential LLC. *See Baring, et al. v. Watergate East, Inc., et al*, C.A. No. 192-N (Court of Chancery, New Castle County, DE, filed Jan. 29, 2004). As a result of this new development, this Commission agreed to postpone the hearing on the application until March 1, 2004.[1] At the present writing, the case in the Delaware Court of Chancery remains unresolved.

Discussion

It is plain that the filing of this Application was premature, due to Monument's failure to secure the approval of other property owners comprising the PUD, most notably WEI, and conclude the purchase of assets required by Monument for use as parking for its proposed apartment building conversion. As the Applicant's pre-hearing submission acknowledges, the different buildings comprising the Watergate complex are an integrated project constructed over a common base. These buildings are represented by six different legal entities, each of which is a party to various agreements for integrated service, leases, easements, and access rights. With respect to WEI alone, the Hotel presently leases approximately 46,000 square feet for use as parking from WEI, and Monument's proposed use would also require this space. Owner approval of the PUD modification, however, has not yet been secured, and with respect to WEI,

[1] While it was suggested at the time that this issue could be resolved by simply convening a new membership meeting, WEI has since been advised that simply holding a new membership meeting to vote on this issue would not resolve the dissidents' concerns or obviate the need for judicial resolution of the legal dispute over whether membership approval is needed at all, or, if needed, the applicable voting requirements.

litigation to compel this approval is presently pending. A postponement of the hearing will allow for the resolution of the issue of WEI's position on the PUD amendment, thereby removing some of the present uncertainty over the position of one of the affected owners whose property is part of the PUD.

With or without recordation, the PUD represents a covenant, not only between the property owners and the District of Columbia, but among the property owners themselves, including the Watergate Cooperatives, which owns the property and are the successors-in-interest to the original parties to the covenant.. For this reason, the Office of Planning specifically declined to provide a recommendation to this Commission due to the fact that "the applicant has not provided assurance that the *necessary* approvals from and agreements with all owners have been obtained." Report to Zoning Commission of Andrew Altman, Director, Office of Planning (Jan. 19, 2004) (emphasis added). Indeed, at the set down hearing held on June 9, 2003, the Chair of this Commission specifically raised the concerns about the legality of proceeding to modify a PUD without the approval of all of the affected property owners as a concern that needed to be addressed. See Transcript of Zoning Commission Meeting, at 13 (June 9, 2003). The Applicant's pre-hearing submission does not satisfactorily address this key legal question.

Further, this Commission, the Office of Planning, and the parties lack the detailed information about the exact nature of the project and its ability to satisfy the parking and other area requirements of the zoning regulations.[2] The Office of Planning already identified numerous

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[2] We note, as well, that the Application also fails to include the full "Economic and Fiscal Impact Analysis for the Watergate Hotel and Proposed Watergate Condominium Project Report," thus further impairing WEI's ability to respond on this issue at the March 1, 2004 hearing. *See* Applicant's Statement of May 7, 2003, Appendix G. WEI therefore requests that the full report be filed with this Commission.

areas in which the Application is deficient, and where additional information and analysis is required, including, most notably, the absence of information about the number, distribution, or configuration of parking for the renovated building and each of its separate uses (restaurant, health club, apartment building),[3] and questions about percentage of lot occupancy. The lack of this information was specifically noted as a concern at the June 9, 2003 set down hearing, and the matter was set down with the stipulation from the Office of Planning that, "[i]f the issues cannot be addressed [by the time of the hearing], the public hearing could be postponed." See Transcript of Zoning Commission Meeting, at 12-13 (June 9, 2003). These questions cannot be answered until the litigation over the purchase of WEI's assets, which the Applicant had intended to supply additional parking, has been resolved. For that reason, this Commission postponed the prior hearing set for January 29, 2004. Inasmuch as this key issue is still not resolved, an additional postponement of the hearing is necessary.

Moreover, without a postponement, WEI's ability to engage in vigorous advocacy to protect its economic interests and quality of life will be severely hampered. As noted in its request to participate as a party, WEI's valuable economic interests in its adjacent property will be materially and adversely affected by the proposed conversion. The proposed conversion will also result in objectionable neighborhood impacts, and disrupt the settled expectations of WEI's shareholders in the amenities presently afforded by the Watergate Hotel. While other property owners, such as Watergate West, have also sought to participate as parties in opposition, none of these parties have the direct economic interest in the conversion possessed by WEI, by virtue of

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[3] While, as noted above, WEI has entered into a 99 year lease with the Watergate Hotel for use of this space as parking, it is WEI's position that this lease could terminate for a material failure of consideration if the hotel were to converted to a residential use.

Monument's need to purchase some 44,000 square feet of space from WEI.

Under normal circumstances, it would be reasonable for this Commission to expect the parties in opposition to work closely in coordination with each other in order to present an efficient case within the one hour time frame allotted by the Commission for parties in opposition. Here, however, such cooperation is not possible between WEI and other parties in opposition due to the pending litigation in the Delaware Chancery Court that, if successful, will require WEI to withdraw its opposition to the project and instead, appear before this Commission in support of the application. Confidentiality concerns preclude any substantive discussions of case strategy or vulnerabilities between WEI and other parties in opposition. Likewise, concerns over potential conflicts of interests prevent WEI from sharing or jointly presenting expert witnesses with other parties, or even agreeing upon a reasonable formula for sharing the allocated time. A postponement of the hearing, however, will allow the Chancery Court an adequate opportunity to resolve the pending litigation over the vote of WEI's membership on the sale of assets to Monument Residential, and remove the uncertainty over WEI's status as a party in opposition that presently impairs WEI's ability to present its opposition case efficiently and effectively.

Conclusion

As the foregoing demonstrates, a postponement will serve the interests of efficiency and economy in this administrative proceeding by resolving a disputed factual matter that materially affects the configuration of the project, and the ability of WEI to protect its interests before this Commission. Accordingly, WEI respectfully requests that the March 1, 2004 hearing on the above-referenced application be postponed in order to allow for the resolution of litigation over WEI's sale of assets to Monument Residential LLC. If postponement is denied, WEI hereby

requests that WEI be allocated an additional one-half hour time to present its case in opposition.

Respectfully submitted:



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February 13, 2004

CERTIFICATE OF SERVICE

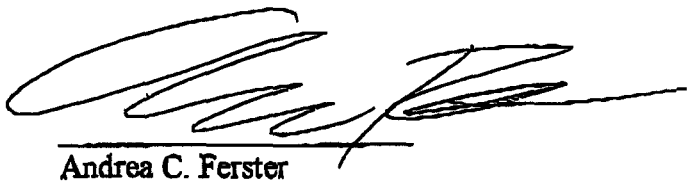
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