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July 27, 2007

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HAND DELIVERY

District of Columbia Zoning Commission
441 4th Street, NW
Second Floor
Washington, DC 20001

Re: Request for Extension of Time, Zoning Commission Order No 05-03
Anacostia Gateway Government Center
1800 Block Martin Luther King, Jr. Avenue, SE
Parcel 224/31; Square 5600, Lot 17; Square 5601, Lots 54, 858, 859, 860 and part
of 857 (the "Property")

Dear Members of the Zoning Commission:

On behalf of the District of Columbia Office of Property Management, the Applicant in the above-referenced planned unit development ("PUD"), this letter serves as a request for a two (2) year extension of the approved PUD, such that an application must be filed for a building permit no later than August 19, 2009 and construction must start no later than August 19, 2010. This request is filed pursuant to §2408.10 of the Zoning Regulations for good cause shown herein. A copy of Order No 05-03 is enclosed as Exhibit A.

The Applicant respectfully requests that the Zoning Commission consider this motion at its September 10, 2007, public meeting.

I. INTRODUCTION

A. Factual Background

By Order No. 05-03, the Zoning Commission approved a consolidated planned unit development and map amendment (from C-M-1, C-3-A and R-3 to C-3-A) to allow construction on the Property of an office building with two components having a total gross floor area of approximately 335,270 square feet, building density of 2.93 FAR, and maximum building height of 80 feet, including portions not taller than 44 feet in keeping with the context of the Anacostia neighborhood. The District of Columbia Department of Transportation (DDOT) is intended to be the primary occupant of the building, along with retail and service uses.

ZONING COMMISSION
District of Columbia
CASE NO. 05-03A
EXHIBIT NO. 1

The Applicant remains fully committed to this important redevelopment opportunity. Nonetheless, given certain circumstances that the Applicant has encountered since the Commission's Order was issued, detailed below, the Applicant respectfully requests additional time to file for a permit and to start construction of the building.

B. Jurisdiction of the Zoning Commission

Section 2408.10 of the Zoning Regulations authorizes the Zoning Commission to extend the dates of validity for PUDs. That subsection sets forth the requirements that must be met in order for the Commission to grant such an extension, providing in relevant part

The Zoning Commission may extend the periods set forth in §§2408.8 and 2408.9 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; Provided that the Zoning Commission determines that the following requirements 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.

Pursuant to §2408.10, 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 follows:

2408.11 For purposes of Paragraph 2408.10(c), an extension of the validity of a planned unit development may be granted by the Zoning Commission for good cause shown if an applicant has demonstrated with substantial evidence one or more of the following criteria:

- (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 APPLICANT DEMONSTRATES GOOD CAUSE FOR EXTENSION OF THE PUD VALIDITY

A. Project Has Experienced Delay Beyond Applicant's Control

Section 2408.11(c) allows for extensions based upon a "condition, circumstance 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." For the following reasons, the instant Application satisfies this criterion and thus deserves extension of the validity of the PUD

1. Difficulties with Property Assemblage.

As part of its assemblage of the parcels comprising the Property, the Applicant was required to utilize its eminent domain powers to take control of at least one parcel. Given the past use of that property as a gasoline service station, the Applicant was confronted with significant unanticipated environmental remediation responsibilities, which obligations automatically were transferred from the prior owner and occupant to the Applicant as a result of the exercise of eminent domain. While underground storage tanks have been removed from the site and the Applicant is in the process of establishing a regular monitoring protocol for the Property, this very expensive and time consuming complication resulting from the assemblage process has required extensive attention and resources from the Applicant, which in turn have led to re-study and delays in the implementation of the Project.

2. Delays in Developer Selection:

The Project also is one of the first public projects in the District to be awarded through a newly implemented two-stage developer selection process involving a Request For Qualifications followed by a Request for Proposals from those developers qualified in the first round of reviews. While the Applicant is encouraged that the new process ultimately will allow the Applicant to identify and retain the most qualified and suitable developer candidates for important public projects throughout the District, the "growing pains" associated with the District's switch to this new process has resulted in additional delays for the Project.

While this two-stage review process has been utilized at the federal level, it has not been widely implemented at the District level, requiring significant internal legal and contractual review prior to its implementation. This internal review included such matters as revisions needed to base building performance standards and specifications to ensure adequacy for the Request for Proposal review. Despite these delays, the

Applicant plans to name the successful applicant in the coming few weeks and to proceed promptly with continued implementation of the approved Project.

In the present case, the offset to the obvious benefits associated with selecting the best qualified development partner to bring the Project to fruition is the delay needed to allow that selected developer to complete the construction-level design review for the approved Project and to implement the contractor bidding process.

3. Administration Changes.

Among the unusual aspects of the PUD is the fact that the Applicant is not a private developer or property owner but an instrumentality of the District of Columbia, and an important component of its executive branch. As such, the change in executive leadership with the Fenty administration understandably involved personnel changes within the leadership of OPM, along with a reevaluation of priorities. These changed perspectives have included input into the implementation of the new two-step developer selection process, described above. The new administration is fully supportive of the project and looks forward to seeing the vision realized.

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 significant form. The use, height, density and other zoning parameters have not changed. The plans have not changed. The PUD likewise remains consistent with the District's planning principles for the area, established in the recently-revised Comprehensive Plan. As demonstrated on the attached excerpt of the Comprehensive Plan's Future Land Use Map, the Property is designated for "Local Public Facilities" use (Exhibit B). Likewise, the Far Southeast/Southwest Area Element specifically includes the Anacostia Gateway Government Center as an action item (Exhibit C). The extension is requested to address the pre-construction issues identified above in order to allow the Project to move forward to construction.

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.

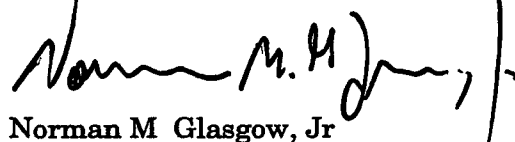
In the present case, the Applicant is not aware of any material factual conflict generated as a result of the PUD. As such, no public hearing is needed or required.

III. CONCLUSION

In light of this demonstration of good cause and for the reasons stated herein, the Applicant respectfully requests that the PUD be extended for two (2) additional year(s) before an application for building permit must be filed. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "Norman M. Glasgow, Jr.", with a stylized flourish at the end.

Norman M. Glasgow, Jr.

Attachments

cc: ANC 8A