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June 12, 2009

Via Hand Delivery

Anthony Hood, Chairperson
441 4th Street, NW
Suite 210-S
Washington, DC 20001

#05-17B/05-32B

2009112

Re: Zoning Commission Order No. 05-17A/05-32A; Motion for Extension of Time; PUD in the Vicinity of the Intersection of 9th and V Streets, NW (Square 2873, Lots 799¹; Square 2875, Lots 1109 and 1110²)("Property")

1:01

Dear Chairperson Hood:

On behalf of Broadway Atlantic One LLC, Broadway Atlantic Two LLC, and Broadway Atlantic Four LLC (collectively "**Broadway**"), the owner of the Property in the District of Columbia, we hereby request a two year extension of Zoning Commission Orders No. 05-17/05-32, 05-17A/05-32A, and 05-17B/05-32B (copies of which are attached as Exhibit A). These orders approved a planned unit development initially consisting of four parcels of land that would be developed with mixed-use developments. The PUD was subsequently modified to exclude one parcel of land, leaving the above-referenced Property to be developed with up to 724 residential units and at least 14,794 square feet of retail (and up to 34,551 square feet of retail space). This extension request is made pursuant to Section 2408.10 et. seq. of the Zoning Regulations for the good cause shown herein.

¹ The land area that now comprises Lot 799 was formerly known as Lots 1, 232, 852, 853, 859, and 864.

² The land area that now comprises Lots 1109 and 1110 was formerly known as Lots 1107, 2012, 2026, and 2030.

ZONING COMMISSION
District of Columbia

A. Summary

In brief summary, Broadway initially secured approval for this application in June 2006. It subsequently modified the application to increase the total number of units and reduce unit size. At the time of the modification, the real estate market had started to slow, particularly among residential projects with larger units. Accordingly, Broadway sought approval to decrease the size of the units in the project and increase the maximum number of units provided. Broadway also sought approval to remove a small parcel of property from the application upon its sale to the 9:30 Club. The Commission approved these modifications on June 15, 2007.

The Zoning Commission Order requires an application for a building permit to be filed within two years of the approval date. Since that time, however, the real estate market has changed drastically and Broadway has been unable to secure the financing required to go forward with the first phase of development. Broadway needs more time to move forward with the development. Broadway requests a two-year extension of the PUD approval to allow current market indicators to improve.

This request is timely filed as the PUD approval expires on June 15, 2009.

B. The Applicant

Broadway Management, the parent company, is an owner, manager and developer of both commercial and residential properties. Since 1978, Broadway has owned and managed in excess of twenty-three million square feet of income-producing property. Broadway's initial area of specialty was the renovation, rehabilitation and upgrade of commercial office buildings located primarily in New York City. Under-performing assets were given substantial makeovers both structurally and aesthetically and repositioned in the market.

In more recent years, Broadway entered the D.C. market and positioned itself to be a major developer of residential projects in the District. In addition to this project, Broadway currently is involved in several other projects in the District, including a residential project at 318 I Street, NE, the Dumont condominiums at 425 Massachusetts Avenue, NW, and, in partnership with Abdo Development, Senate Square, which is the former Capital Children's Museum site.

C. Overview of the PUD and PUD Site

The PUD Site consists of Square 2875, Lot 1109 (“Parcel A”); Square 2875, Lot 1110 (“Parcel B”); and Square 2873, Lot 799 (“Parcel C”) (collectively, “PUD Site”). It is located in the vicinity of the intersection of 9th Street, NW and V Street, NW. The PUD Site has a total land area of approximately 91,443 square feet, or just over two acres. Parcel A is located in the CR Zone District at the northwest corner of the intersection of 8th and V Streets, NW. Parcel B is located in the ARTS/C-2-B Zone District at the southeast corner of 8th and V Streets, NW. Parcel C is located in the CR Zone District between Florida Avenue and 9th Street, NW, south of the Howard University parking lot. The PUD Site is northeast of the U Street corridor, southwest of Howard University and in the immediate vicinity of the popular music venue, the 9:30 Club.

The PUD Site was approved for a mixed-use development consisting of approximately 707,444 square feet of residential use, or up to 724 residential units and at least 34,440 square feet of retail use. Parcels A and C were approved for maximum heights of 100 feet while Parcel B was approved for a maximum height of 90 feet. The PUD is consistent with the Comprehensive Plan, which designates the PUD Site as appropriate for a mix of moderate and medium density residential and commercial uses. The project is also located within the boundaries of the DUKE Plan, which seeks to guide future development by capitalizing on the area’s historic context to restore the neighborhood with 18-hour destinations.

D. Jurisdiction of the Zoning Commission

The Commission is authorized to extend a PUD provided that:

- “The extension request is served on all parties to the application by the applicant and all parties are allowed thirty (30) days to respond;
- There is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD and would undermine the Commission’s justification for approving the original PUD; and
- The applicant demonstrates with substantial evidence that there is a good cause for such extension...”

In order to demonstrate “good cause shown”, the applicant must demonstrate:

- “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;
- 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
- 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.”

E. Legal Tests for Extension Approval

1. No Substantial Change of Material Facts

The application was first approved in 2006 and a subsequent modification was approved in 2007. There has been no substantial change of material facts since the Commission’s most recent approval of the application, just two years ago in 2007. At that time, the Commission found that the PUD modification application was “appropriate, because the proposed development is consistent with the present character of the area and the existing zoning.” It further noted that the PUD modification application is not inconsistent with the Comprehensive Plan.

The area surrounding the PUD Site has remained largely untouched for decades and this PUD was marked as a project that would help invigorate the neighborhood. Nothing has changed in the last two years that would make the approved density and height inconsistent with the Comprehensive Plan or the objectives of the DUKE Plan. The only substantial change to the development of the area was the construction of the Floridian condominiums, located immediately south of Parcel C on Florida Avenue. The high-rise condominium building is of a comparable height and density as the PUD, bolstering the appropriateness of the PUD in that neighborhood. Moreover, the approved PUD did not include a map amendment – the approved uses are permitted as a matter-of-right and the development purely seeks the flexibility a PUD affords for the CR and C-2-B Zone

Districts. Thus, the proposed development does not stretch the bounds of the existing zoning.

2. Good Cause Shown

Broadway secured approval for this PUD during the height of the residential resurgence in the District. Since that time, however, land values have collapsed and financing has dissipated; yet, construction costs remain high. The contraction in the credit market has had a direct effect on Broadway and precludes it from securing the requisite financing needed to develop the project. Broadway has made many unsuccessful efforts to secure financing. Even today, credit remains largely frozen; the lack of liquidity is forcing Broadway to keep construction of the project on hold indefinitely. See newspaper articles attached as Exhibit A.

3. Service on Parties

By copy of this Motion, all parties in the proceedings before the Zoning Commission for Cases No. 05-17/05-32 and 05-17A/05-32A have been served with this request for extension of time.

F. Conclusion

Broadway believes that it has sufficiently shown good cause of its inability to apply for a building permit before the expiration of the PUD approval. Broadway has invested significant funds to purchase the Property and development approvals -- its interests are aligned with the District's in that it does not benefit from a prolonged vacancy of the Property. Broadway welcomes the opportunity to go forward with the PUD; however, it must first secure the requisite financing. Given the state of the market, it does not seem that this will occur in the near future; thus, Broadway seeks a two year extension of the PUD approval.

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Best regards,


Allison C. Prince


Christine A. Roddy

cc: David Weldler

Certificate of Service

I hereby certify that on June 12, 2009, a copy of the foregoing document was delivered via hand delivery or first-class mail, to the following:

Joel Lawson
Office of Planning
2000 14th Street, NW
Suite 4000
Washington, DC 20009

Advisory Neighborhood Commission 1B
PO Box 73710
Washington, DC 20056


Christine Roddy