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Reference Number
031752.00002

Anthony Hood, Chair
Zoning Commission for the District of Columbia
441 Fourth Street, N.W., Suite 210-S
Washington D.C. 20001

Re: Application of G.K.D. 1412 Chapin Street LLC
Zoning Commission Case No. 09-15
Request for Waiver of 11 D.C.M.R. §§ 3014.1,
3015.3

Dear Chairman Hood and Members of the Commission:

Pursuant to 11 D.C.M.R. § 3000.8, the Applicant in the above-referenced case hereby requests that the Commission waive the 40-day notice period prescribed by 11 D.C.M.R. §§ 3014.1 and 3015.3 to allow the expedited rescheduling of the public hearing in this case, which was cancelled due to a government-wide closure on February 11, 2010.

Due to the unprecedented snowfall that the District of Columbia and surrounding area experienced this week, all District government offices were closed on February 11, the date on which the public hearing in this case was to be held. In light of the District-wide closure, which was beyond the control of the Applicant, the Commission, and the Office of Zoning staff, the Applicant respectfully requests that the Commission waive any additional notice period which might be required, under Sections 3014.1 and 3015.3, in order to reschedule the public hearing on Case No. 09-15 to the earliest possible date.

Legal Authority for Waiver of Notice Requirements

Zoning Commission Rules of Procedure

The Commission may waive *any* of the rules in Chapter 30 of the Zoning Regulations upon a showing of good cause and provided that the waiver will not prejudice the rights of any party. 11 D.C.M.R. § 3000.8 (emphasis added). The Applicant submits that rescheduling the hearing in this case without an additional 40-day notice period will not prejudice the rights of any party in this matter, and there is certainly good cause for doing so.

ZONING COMMISSION
District of Columbia

CASE NO. 09-15
EXHIBIT NO. 30
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As noted in all of the Applicant's filings, the proposed development will be financed, in part, with federal Low Income Housing Tax Credits (LIHTCs). LIHTCs are administered through the District of Columbia Department of Housing and Community Development ("DHCD"), the state authority tasked under federal law to evaluate the project against the federal guidelines and the state's allocation of available credits. DHCD allocates the credits available to the District of Columbia from the federal government through a competitive allocation process. That process is initiated by publication of a Notice of Funding Availability, which is typically issued in April. The competitive allocation process requires projects applying for LIHTCs to be "shovel ready," that is, with all development approvals in hand and able to commence construction immediately. The Applicant filed the instant application in September of 2009 with the expectation that the public hearing process would be complete and the project would be eligible for the April 2010 Notice of Funding Availability from DHCD. An additional 40-day notice period would likely delay the proposed development, a 100% affordable housing project, at least one year, because the Applicant would not be eligible to apply for LIHTCs until the 2011 allocation. This delay represents an undue hardship to the Applicant.

The waiver of the notice provisions will not have any prejudicial effect on the rights of any party to this matter. The instant application was duly advertised in the District of Columbia, and the required notice, pursuant to 11 D.C.M.R. § 3015.3 was mailed to all residents within 200 feet of the property more than 40 days prior to the scheduled hearing date of February 11. The Applicant has maintained a posting on the subject property, as evidenced by the Affidavit of Maintenance filed with the Commission on February 4, 2010. The Advisory Neighborhood Commission, Office of Planning, DDOT, DC Fire/EMS, and DC WASA have all filed favorable reports with the Commission. A public announcement of the District-wide government closure was made on the District of Columbia's own website, and was broadcast by all major television and radio outlets throughout the District of Columbia. As of Thursday, February 4, 2010, there were no letters of opposition in the record, and no requests for party status. Therefore no person or party would be adversely impacted by the requested waiver.

The Zoning Act

Pursuant to the Zoning Act of 1938 (D.C. Official Code §§ 6-6401.01 to 641.15), before putting into effect any map amendment, the Zoning Commission must provide notice of the hearing "in accordance with the requirements of subchapter I of Chapter 5 of Title 2 [the Administrative Procedure Act]." D.C. Official Code § 6-641.03. The Administrative Procedure Act distinguishes between contested cases and rulemaking procedures. Rulemakings require a minimum of 30 days notice. D.C. Official Code § 2-505(a). Contested cases require "reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be." D.C. Official Code § 2-509(a). Both notice requirements appear in subchapter I of Chapter 5 of Title 2 of the District of Columbia Official Code, referenced in the Zoning Act. The instant application is a

Arent Fox

contested case. *See* Public Hearing Notice, attached. Contested cases require only “reasonable notice of the afforded hearing.”

The Applicant hereby requests that the Commission reschedule this hearing to the earliest possible date. As both the application for Planned Unit Development and the Related Map Amendment are being processed as a Contested Case pursuant to 11 D.C.M.R. § 3022, there is no legal requirement for an additional 30 day notice period prior to rescheduling the initial hearing, which was duly noticed in accordance with the Zoning Act and the Commission’s Rules of Procedure.

In the alternative, the Applicant requests that the Commission shorten the notice period under 11 D.C.M.R. §§ 3014.1 and 3015.3 to 30 days.

Please let me know whether you require anything further to process this request.

Sincerely,

A handwritten signature in black ink, appearing to be 'Kinley R. Bray', with a long horizontal flourish extending to the right.

Kinley R. Bray

Cc: Carlos Perdomo (via e-mail)
Buwa Binitie (via e-mail)
Jordan Bishop (via e-mail)
Ellen McCarthy (via e-mail)
Joel Lawson, Office of Planning (via e-mail)
Paul Goldstein, Office of Planning (via e-mail)
Alan Bergstein, OAG (via e-mail)
Sharon Schellin, Office of Zoning (via e-mail)

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE:

**Thursday, February 11, 2010, 6:30 p.m. (2nd Case)
Office of Zoning Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001**

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 09-15 (G.K.D. 1412 Chapin Street, LLC – Consolidated PUD and Related Map Amendment @ Square 2661, Lot 152)

THIS CASE IS OF INTEREST TO ANC 1B

On September 25, 2009, the Office of Zoning received an application from G.K.D. 1412 Chapin Street, LLC, *et al.* (the “Applicant”) for approval of a consolidated PUD and related map amendment for the above-referenced property to rezone the subject property from the R-5-B Zone District to the C-2-B Zone District. The Office of Planning provided its report on October 30, 2009, and the case was set down for hearing on November 9, 2009. The Applicant provided its prehearing statement on December 2, 2009.

The property that is the subject of this application consists of approximately 9,000 square feet of land area and is located at 1412 Chapin Street, N.W. (Square 2661, Lot 152). The subject property is zoned R-5-B.

The Applicant proposes to construct a 48,258 square-foot building with five stories (57 feet in height), that will provide 44 units of workforce housing (defined here as housing affordable to families earning no more than 60% of Area Median Income. The density of the building will be a 5.36 floor area ratio (“FAR”) and the lot occupancy will be up to 100% on the ground floor. The project will provide 16 vehicle parking spaces, one loading/delivery space, and 41 bicycle parking spaces in an indoor garage.

The Applicant proposes to rezone the subject property from the R-5-B Zone District to the C-2-B Zone District. The R-5-B Zone District permits all types of urban residential development of a moderate height and density, as well as those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive Residence Districts. With some exceptions, the maximum permitted height in the R-5-B Zone District is 50 feet, the maximum permitted lot occupancy is 60%, and the maximum density is 1.8 FAR. The proposed C-2-B Zone District permits mixed residential and commercial development as a matter-of-right, to a maximum lot occupancy of 80% for residential use, a maximum density of 3.5 FAR, of which no more than 1.5 may be devoted to other than residential uses, and a maximum height of 90 feet. Under Chapter 24, the guideline for height in

**Z.C. NOTICE OF PUBLIC HEARING
Z.C. CASE NO. 09-15
PAGE 2**

a PUD is 90 feet and the guideline for density is 6.0 FAR, of which no more than 2.0 may be commercial.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, 11 DCMR § 3022.

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of 11 DCMR § 3022.3.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. Persons seeking party status **shall file with the Commission, not less than fourteen (14) days prior to the date set for the hearing, a written statement containing the following information:**

- (a) The person's name, address, and daytime telephone number;
- (b) A request to appear and participate as a party;
- (c) Whether the person will appear as a proponent or opponent of the application;
- (d) Whether the person will appear through legal counsel, and if so, the name and address of legal counsel;
- (e) A list of witnesses who will testify on the person's behalf;
- (f) A summary of the testimony of each witness;
- (g) An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts;
- (h) The total amount of time being requested to present their case; and

**Z.C. NOTICE OF PUBLIC HEARING
Z.C. CASE NO. 09-15
PAGE 3**

- (i) A written statement setting forth why the person should be granted party status, including reference to the following:
- (1) The property owned or occupied by the person, or in which the person has an interest, that will be affected by the action requested of the Commission;
 - (2) The legal interest the person has in said property, such as owner, tenant, trustee, or mortgagee;
 - (3) The distance between the person's property and the property that is the subject of the application before the Commission;
 - (4) The economic, social, or other impacts likely to affect the person and/or the person's property if the action requested of the Commission is approved or denied; and
 - (5) An explanation of how the person's interest as identified in response to paragraph (4) would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public.

The Applicant shall also provide the information indicated in (e) through (h) to the extent that the information is not contained in the Applicant's prehearing submission as required by 11 DCMR § 3013.1.

If an affected Advisory Neighborhood Commission (ANC) intends to participate at the hearing, the ANC shall submit the written report described in § 3012.5 no later than seven (7) days before the date of the hearing. The report shall also contain the information indicated in (e) through (h) above.

Time limits.

The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

- | | | |
|----|----------------------------------|-------------------------|
| 1. | Applicant and parties in support | 60 minutes collectively |
| 2. | Parties in opposition | 60 minutes collectively |
| 3. | Organizations | 5 minutes each |
| 4. | Individuals | 3 minutes each |

Pursuant to § 3020.3, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Information should be forwarded to the Secretary of the Zoning Commission, Office of Zoning, Suite 200/210-S, 441 4th Street, N.W., Washington, D.C. 20001. Please include the number of

**Z.C. NOTICE OF PUBLIC HEARING
Z.C. CASE NO. 09-15
PAGE 4**

the particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, WILLIAM W. KEATING, III, KONRAD W. SCHLATER, PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JAMISON L. WEINBAUM, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.