

Paul A. Tummonds, Jr.
ptummonds@goulstonstorrs.com
202-721-1157 Tel
202-263-0510 Fax

October 16, 2014

Via Hand Delivery

Anthony Hood, Chairperson
District of Columbia Zoning Commission
441 4th Street, NW, Suite 210-S
Washington, DC 20001

Re: **Zoning Commission Order Nos. 10-12 and 10-12A; Motion for Extension of Time for the Approval of Project Located at 129 Q Street, SW (Square 601, Lot 55)**

Dear Chairman Hood and Members of the Commission:

On behalf of Tiber Creek Associates, LLC (the “**Applicant**”), we hereby request an additional two year extension of the time period for approval of Zoning Commission Order Nos. 10-12 and 10-12A. This extension request is made pursuant to Section 3130.6 of the Zoning Regulations¹. The property which is the subject of this application is located at 129 Q Street, SW (the “**Property**”).

A. **Summary of Requested Relief**

The project approved in Zoning Commission Order No. 10-12 (a copy is attached as Exhibit A), which became final and effective on November 12, 2010, will create a hostel and hotel concept (the “**C Hostel & Hotel**”) that will be the first of its kind in the District. The C Hostel & Hotel concept is intended to sell beds rather than rooms.

In Zoning Commission Case No. 10-12, the Zoning Commission granted special exception review and design approval pursuant to the Capitol Gateway Overlay District requirements enumerated in Section 1610 of the Zoning Regulations. The Zoning Commission also granted special exception relief related to the roof structures and the number of parking spaces proposed in the project. There was no opposition to this case and the only Party was

¹ In Order No. 10-12A, the Zoning Commission considered the time extension request in accordance with the standards enumerated in Section 3130.6, because the Zoning Commission also granted special exception relief in Order No. 10-12. Order No. 10-12A noted that “the Commission took no position whether an order granting a Capitol Gateway review expires if the order does not also grant special exception or variance relief.”

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COMMISSION
DISTRICT OF COLUMBIA

CASE NO. 10-12-B

EXHIBIT NO. 7

ANC 6D, which supported the application in writing and presented testimony at the public hearing in support of the application. The Office of Planning noted its support for the roof structure and parking relief and testified that the design of the project generally meets the intent of the Capitol Gateway Overlay and that the removal of the proposed single curb cut associated with the project could more completely meet the intent of the Capitol Gateway Overlay District.

On October 12, 2012, the Applicant filed a time extension application requesting relief from Section 3130.1 of the Zoning Regulations, which required that an application for a building permit for the construction of the approved project must be filed within two (2) years of the date of the effective date of Zoning Commission Order No. 10-12, November 12, 2012. The Office of Planning and ANC 6D supported the time extension request. Pursuant to ZC Order No. 10-12A (copy attached as Exhibit B), the Zoning Commission approved the two-year time extension request, and required that the Applicant file a building permit application to construct the approved project by November 12, 2014.

Due to litigation and other circumstances outside of its control, discussed in detail below, the Applicant is requesting an additional two years, until November 12, 2016, in which time it will be required to file a building permit application to construct the approved C Hostel and Hotel project.

B. Jurisdiction of the Zoning Commission to Grant the Requested Relief

Section 1610.7 of the Zoning Regulations authorized the Zoning Commission to hear and decide any additional requests, in addition to the review of the CG Overlay standards, for special exception review. The BZA (or the Zoning Commission in this case) is authorized to extend the validity of a previously approved Order provided that:

- (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 Board based its original approval of the application that would undermine the Board's justification for approving the original application; and
- (c) The applicant demonstrates that there is a good cause for such extension, with substantial evidence of one or more of the following criteria:
 - (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;
 - (2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or

- (3) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control.

(Section 3130.6 (a-c))

C. Legal Tests for Extension Approval

1. Service on Parties

The only party in Zoning Commission Case Nos. 10-12 and 10-12A was Advisory Neighborhood Commission 6D. As shown in the attached Certificate of Service, ANC 6D is being served with this time extension request.

2. No Substantial Change of Material Facts

There has been no substantial change of material facts since the Zoning Commission's approval of the application in 2010 and approval of the time extension request in 2012 that would undermine the Zoning Commission's justification for approving the original application. The Property that is the subject of the application has not changed, the Zone District has remained the same, and there have been no changes to the Comprehensive Plan or the Zoning Regulations which impact the Zoning Commission's previous decision.

While not directly applicable to the development of the C Hostel and Hotel project, the proposed location of the new DC United Soccer Stadium is approximately one-two blocks to the south of the Property. The creation of a 20,000 – 25,000 seat soccer stadium will certainly add to the vitality and livelihood of the immediate area and will likely make the financing of the C Hostel and Hotel project easier to achieve.

3. Good Cause Shown

As noted in previous submissions to the Zoning Commission, a taxi cab service and repair garage operated on the Property. In preparation for the development of the C Hostel and Hotel the Applicant sought to remove the operator of the taxi cab service and repair garage from the Property, in accordance with the terms of the lease between the parties, and to raze the existing structures on the Property. The operator of the taxi cab service and repair garage stopped paying rent in May of 2013 and refused to vacate the Property. Unfortunately, the Applicant was required to commence eviction proceedings against the tenant in DC Superior Court. The Applicant expended approximately nine months of effort and \$25,692 in legal fees evicting the tenant. A more detailed description of the timing and events in this litigation proceeding is attested to by Marie P. Carr representative of the Applicant (see the attached affidavit in Exhibit C).

In addition, the District of Columbia Department of Consumer and Regulatory Affairs issued a violation notice on September 4, 2014, and a Special Assessments Bill to Tiber Creek in the amount of \$2,856.84 to account for the excessive trash and debris which were left on the Property by the former tenant. Tiber Creek paid the Special Assessments Bill on September 26, 2014. The Applicant has filed a raze permit to remove the existing structures on the Property and the demolition activity is expected to start within the next few months.

While the taxi cab service and repair use was operating on the Property it was difficult for the Applicant to undertake necessary due diligence issues which were needed to prepare the Property for development of the C Hostel and Hotel. In addition, the neighborhood including and surrounding the Property remains an area that is still in transition from a semi-industrial and under-developed past, to a future that is ripe for significant new development (with the new DC United Soccer Stadium as the driver of new economic activity). For these reasons, the Applicant believes that it is appropriate for the Zoning Commission to grant the two-year time extension request.

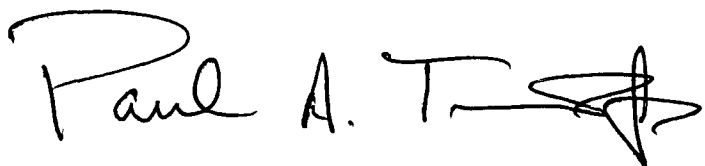
All of this information is provided to show the Zoning Commission that there are significant circumstances, including litigation, outside of the Applicant's control that have prevented the ability to move forward with the C Hostel and Hotel project. This substantial evidence satisfies the good cause standard enumerated in Section 3130.6(c).

D. Conclusion

The Applicant believes that the information provided in this application satisfies all of the requirements of Section 3130.6 regarding the inability of Tiber Creek to file a building permit for the project prior to November 12, 2014. The Applicant believes that it is entirely appropriate for the Zoning Commission to grant an additional two years, until November 12, 2016, in which time it will be required to file a building permit application to construct the approved C Hostel and Hotel project. The Applicant is available to provide additional information regarding this application at the request of the Zoning Commission.

Please feel free to contact the undersigned if you have any questions or comments regarding this application.

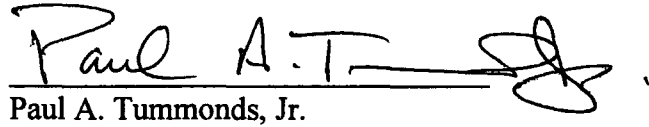
Respectfully Submitted,

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

Paul A. Tummonds, Jr.

Certificate of Service ***goulston&storrs***
counsellors at law

I hereby certify that I sent the foregoing document to the addresses below on October 16, 2014 by first class mail or hand delivery.


Paul A. Tummonds, Jr.

Joel Lawson (By Hand Delivery)
Office of Planning
1100 4th Street, SW
Suite E650
Washington, DC 20024

ANC 6D
Roger Moffat, Chair
1301 Delaware Avenue, SW
Washington, DC 20024

ANC 6D04 Commissioner Rhonda Hamilton
44 O Street, SW
Washington, DC 20024