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ZONING COMMISSION
District of Columbia
CASE NO. 10-12B
EXHIBIT NO. 6
ZONING COMMISSION
District of Columbia
CASE NO. 10-12B
EXHIBIT NO. 6

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-12B
Z.C. Case No. 10-12B
Tiber Creek Associates, LLC
(Time Extension – Capitol Gateway Overlay Review and Special Exception Approval)
November 24, 2014

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on November 24, 2014. At that meeting, the Commission approved the request of Tiber Creek Associates, LLC (“Applicant”) for a two-year time extension in which to file a building permit application for the construction of the C Hostel & Hotel approved by Z.C. Order Nos. 10-12 and 10-12A. The property (Lot 55 in Square 601) that is the subject of this application is located at 129 Q Street, S.W. (“Property”). The time extension request was made pursuant to Chapters 1 and 31 of the District of Columbia Zoning Regulations. The Commission determined that these requests were properly before it under the provisions of §§ 1600 and 3130.6 Title 11 of the District of Columbia Zoning Regulations (Zoning)

FINDINGS OF FACT

1. Z.C. Commission Case No. 10-12, which became final and effective on November 12, 2010, approved the construction of a hostel and hotel concept (“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. The hotel component of the project will be comprised of rooms with single and double beds and in-room bathrooms. The hostel component of the project will include dormitory-styled rooms and shared female and male showers on each floor. The approved project will consist of approximately 109 rooms and approximately 489 beds.
2. In Z.C. Case No. 10-12, the Commission granted special exception review and design approval pursuant to the Capitol Gateway Overlay District requirements enumerated in § 1610 of the Zoning Regulations. The 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 Advisory Neighborhood Commission (“ANC”) 6D, which supported the application in writing and presented testimony at the public hearing in support of the application. The Office of Planning (“OP”) 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.
3. On October 12, 2012, the Applicant filed a time extension application requesting relief from § 3130.1 of the Board of Zoning Adjustment’s Rules of Practice and Procedure, which required that an application for a building permit for the construction of the approved project must be filed within two years after of the effective date of Z.C. Order No. 10-12, November 12, 2012. OP and ANC 6D supported the time extension request. Pursuant to Z.C. Order No. 10-12A, the 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. (Exhibit ["Ex."] 1.)

4. On October 16, 2014, the Applicant filed a second time extension request (Z.C. Case No. 10-12B). The Applicant provided evidence that a taxi cab service and repair garage operated on the Property. In preparation for the development of the C Hostel & 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. 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. (Ex. 1)
5. 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 noted that it filed a raze permit to remove the existing structures on the Property. (Ex. 1)
6. The Applicant provided a written statement that noted 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 & Hotel. In addition, the Applicant noted that 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. The Applicant also made the Commission aware that 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 & Hotel project easier to achieve. (Ex. 1.)
7. In its November 14, 2014 report to the Commission, OP recommended approval of the time extension request. OP concluded that the Applicant satisfied the relevant standards of § 3130.6. (Ex. 5.)

CONCLUSIONS OF LAW

The Commission reviewed this application pursuant to its authority established in §§ 1600 and 1610 (Capitol Gateway Overlay District) of the Zoning Regulations. In Z.C. Order No. 10-12A, the Commission noted that it considered the time extension request in accordance with the standards enumerated in § 3130.6. In doing so, the Commission took no position whether an order granting a Capitol Gateway review expires if the order does not grant special exception or

variance relief. The Commission continues to take that same position for this second time extension application.

Subsection 3130.6(a) requires that the Applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The Applicant served the only party to the application, ANC 6D, when it filed the time extension application on October 16, 2014. ANC 6D did not participate in this application.

Subsection 3130.6(b) requires that there is no substantial change in any of the material facts upon which the Board (Commission in this case) based its original approval of the application that would undermine the Board's (Commission in this case) justification for approving the original application. OP noted that the Comprehensive Plan and the Zoning Regulations that govern the site and the approved project are unchanged. OP concluded that there have been no substantial changes to the neighborhood immediately surrounding the proposed project, and therefore, there have been no substantial changes to the facts upon which the Commission based its original decision. The Commission agrees with OP and concludes that extending the time period of approval for the application is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original application.

Subsection 3130.6(c) requires that the applicant demonstrate with substantial evidence that there is a good cause for the proposed extension with substantial evidence of one of 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.

The Commission finds that there is good cause shown to extend the period of time in which the Applicant is required to file a building permit application for the C Hostel & Hotel. The Commission finds that the litigation necessary to remove the former tenant on the Property was a factor beyond the Applicant's reasonable control that prohibited the Applicant from undertaking necessary due diligence matters to prepare the building permit application. The Commission finds that the Applicant has diligently engaged in actions to move forward with the development of the C Hostel & Hotel project and that granting the requested time extension is appropriate. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR § 3130.6.

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D C Law 1-21, D C Official Code § 1-309 10(d)) to give “great weight” to the issues and concerns raised in the written report of the affected ANC. As noted above, ANC 6D did not participate in this application.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations. OP recommended approval of the time extension request and the Commission concurs in its recommendation.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a two-year time extension of the CG Overlay District review and special exception approved in Z.C Order Nos 10-12 and 10-12A. The C Hostel & Hotel project approved by the Commission shall be valid until November 12, 2016, within which time the Applicant will be required to file a building permit application to construct the approved project.

On November 24, 2014, upon motion by Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I Cohen, Robert E Miller, Peter G May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR 3028.8, this Order shall become final and effective upon publication in the *D.C Register* on January 2, 2015