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April 15, 2016

Via Online Filing

Zoning Commission
of the District of Columbia
441 4th Street, N.W.
Suite 210S
Washington, DC 20001

Re: **Request for Extension of Time to File Building Permit For Consolidated
Planned Unit Development and Related Map Amendment for
Square 6129, Lot 825, Zoning Commission Order No. 12-21**

Dear Members of the Zoning Commission:

On behalf of Covenant Baptist United Church of Christ and Covenant Full Potential Development (the "Applicant"), the developer and applicant with respect to the referenced PUD, this letter serves as a request for a two-year extension of the time period in which to file a building permit for the construction of an affordable housing development for seniors ("Project") which was approved in Zoning Commission Order No. 12-21 ("Order No. 12-21"). [EXHIBIT A]

This request is filed pursuant to Section 2408.10 of the Zoning Regulations for good cause shown as described in this letter and exhibits. Also enclosed is a completed application form and a check in the amount of \$520.00 made payable to the D.C. Treasurer for the filing fee pursuant to Section 3040.5.

I. Previous Application

A. Application, Parties and Hearing

The Project is to be developed in Square 6129, Lot 825 (the "Property") at 3845 South Capitol Street, S.W. On November 26, 2012, the Applicants filed the Application for

consolidated review and approval of a PUD and related Zoning Map Amendment from R-2 to R-5-A for the Project.

The Property consists of approximately 44,966 square feet of land area at the northwest corner of the intersection of South Capitol St., S.W. and Xenia St., S.W. The Property is currently improved with a red brick, three-story church and annex building and a surface parking lot. The Applicant requested approval for the retention and limited renovation of the existing Covenant Baptist Church on the Property, demolition of a church annex building, and construction of a new three-story apartment building to be devoted to subsidized senior housing and support space. In total, 47,252 square feet or 1.05 total floor area ration ("FAR") of development are proposed on the Property to include 31,564 square feet of gross floor area of new residential development and support space and 15,688 square feet of gross floor area of church uses.

The Project's affordable senior rental apartment building will consist of thirty (30) independent, senior rental units (27 one-bedroom and 3 two-bedrooms) anchored by educational and wellness programming space. One hundred percent of the units will be designed for households earning no more that 60% of area median income ("AMI") with a long-term affordability period of thirty years.

Pursuant to Order No. 12-21, the Zoning Commission granted consolidated PUD approval for the Project and related map amendment. The Order became effective upon publication in the D.C. Register on April 18, 2014. The Order requires the Applicant to file a building permit application for the Project no later than April 18, 2016. As discussed in more detail below, the Applicant is requesting a two-year time extension based upon difficulties beyond the Applicant's control in obtaining essential subsidies for the Project.

B. Jurisdiction of the Zoning Commission

Section 2408.10 of the Zoning Regulations authorizes the Zoning Commission to extend the time periods set forth in Section 2408.8 (two year requirement to file a building permit application) and Section 2408.9 (three year requirement to begin construction), provided the following conditions 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 demonstrated with substantial evidence that there is good cause for such extension, as provided in §2408.11

The criterion for determining whether a PUD should be extended is whether there exists "good cause shown." The Zoning Regulations define "good cause " in §2408.11, as evidence of one or more of the following:

- (a) An ability 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. This Extension Request Was Served On All Parties

Advisory Neighborhood Commissions 8C and 8D ("ANC 8C and 8D") are parties to this case and, as indicated on the Proof of Service attached hereto, the Applicant has served this request for an extension of time on ANC 8C and 8D.

III. There Is Good Cause For Extension of the PUD

A. The Project Has Experienced Delay Due to Financing Difficulties Beyond Applicant's Control

Section 2408.11(a) authorizes the grant of PUD extension for projects confronting difficulties with financing based upon changes in economic and market conditions beyond an applicant's control. In this case, the Applicant has taken many steps to move forward with the Project as set forth in the attached Affidavit by Ray Nix of Urban Matters. Mr. Nix has served as a development consultant to the Applicant from the outset of the Project and through the PUD process. [EXHIBIT B]

The PUD for this site was approved for a new construction, 30-unit senior affordable housing development, which was anticipated to be financed in part with funding from the DC Department of Housing and Community Development (DHCD). DHCD typically releases a Notice of Funding Availability (NOFA) on an annual basis. The NOFA response requires an

extensive amount of due diligence, including an appraisal, market study, environmental site assessment, construction pricing, and financing letters of interest.

When the PUD was approved by the Zoning Commission on 4/18/14, DHCD had already issued its 2014 NOFA on 4/2/14, with a deadline for applications on 5/9/14 leaving the Applicant with an insufficient time, after the PUD process, to submit a funding application in the 2014 round for the approved PUD.

The next DHCD NOFA was not released until 7/29/15, with an application deadline of 10/5/15 at which time the Applicant did submit an application. While the Project met all threshold requirements of the NOFA, it was not selected. However, DHCD encouraged Covenant to re-apply for funding in the next NOFA.

DHCD released a 2016 NOFA on 3/31/16, with a deadline of 5/31/16, with funding announcements anticipated by September 2016. The Applicant plan to re-submit the Project for funding in this 2016 NOFA. Approved zoning for the Project is a threshold requirement for DHCD funding necessitating the requested time extension.

The Applicant has not yet applied for a building permit for the Project, and due to the significant time and cost required to do so, does not plan on submitting for a building permit until DHCD has approved funding for the Project.

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 . . .

There has been no substantial change in any of the material facts upon which the Zoning Commission based its approval of the Project. Since the PUD approval in 2014, there has been no change in the Comprehensive Plan for the Property nor have there been any material changes in the Property itself or area conditions which would undermine justification for approving the extension. If anything, the need for affordable senior housing in the area has only increased. Further, the conditions and obligations imposed as part of the PUD approval continue to be relevant and the Applicant intends to comply with all.

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.

A hearing is not necessary for this request since there are no material factual conflicts concerning any of the criteria set forth in §2408.11. It is well documented in the attached Affidavit, that the Applicant has made best efforts but through no fault of its own has been unable to secure the necessary project financing for the Project prior to the PUD expiration. Further, it would have been imprudent for the Applicant to proceed with filing a building permit for the Project prior to the expiration date without the needed financing.

IV. CONCLUSION

Based upon the forgoing showing of good cause and the Affidavit attached hereto, the Applicant respectfully requests that the Commission approve a two-year extension of time to file a building permit for the Project.

Respectfully submitted,

SAUL EWING LLP



Cynthia A. Giordano

Attachments

Proof of Service

I hereby certify that on April ¹⁵-, 2016, true and correct copies of the Applicant's Request for Extension of ZC Order, Case No. 12-21, were served to the following recipients in the manner indicated:

Via First Class Mail, Postage Prepaid

Advisory Neighborhood Commission 8C
3125 Martin Luther King, Jr., Avenue, SW
Washington, DC 20032

Via First Class Mail, Postage Prepaid

Advisory Neighborhood Commission 8D
3125 Martin Luther King, Jr., Avenue, SW
Washington, DC 20032

Via Email

Jennifer Steingasser
Deputy Director for Development Review
District of Columbia for Development Review
District of Columbia Office of Planning
1100 4th Street, SW
Suite E650
Washington, DC 20024

Via Email

Jamie Henson
Development Review Manager
District of Columbia Department of Transportation
55 M Street, SE Suite 400
Washington, DC 20003



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