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MEMORANDUM

TO: Zoning Commission of the District of Columbia

FROM: Phil Feola P. Feola
David Avitabile DA

DATE: July 11, 2014

SUBJECT: Z.C. Case No. 14-04: Housing Linkage and TDRs

A. Introduction and Overview

The property that is the subject of the PUD in Z.C. Case No. 14-04 is located within the C-3-C Zone District and in the New Downtown Receiving Zone. The New Downtown Receiving Zone was created as a part of the Downtown Development Overlay District ("DD Overlay"), which established a comprehensive and complex set of development requirements and incentives that govern development in the District's Downtown D.C. and surrounding commercial neighborhoods, such as the "New Downtown."

The PUD application and the development of the Property is governed by multiple provisions of the Downtown Development Overlay District Regulations (Chapter 17). The PUD application is being processed pursuant to Section 1709.24 of the Zoning Regulations which is clearly a part of the DD Overlay regulatory scheme. Also, the property is located in Square 74, which is defined by the DD Overlay as within the New Downtown Receiving Zone (Section 1709.16). Further, the New Downtown Receiving Zone permits a maximum FAR of 10.0 and a maximum height of 130 feet on the property through the acquisition of TDRs. Finally, as noted, the PUD application is being sought pursuant to Section 1709.24 of the DD Overlay, which permits a maximum FAR of 10.5 FAR and a maximum height of 130 feet through the PUD process. Section 2404.4(c) of the Zoning Regulations states that "No housing requirement pursuant to this section shall apply to a PUD that is proposed for properties located within the boundaries of the Downtown Development Overlay provisions of Chapter 17 of this title . . .".

Because the property is defined in Section 1709.16 as being included in a Receiving Zone subject to the DD Overlay, pursuant to Section 2404.4(c), no housing linkage is required for this PUD. In fact, the Project is required under Section 1709.24 to purchase 0.49 FAR of additional TDRs to achieve its proposed density of 10.49 FAR.

However, recognizing the important policy considerations of housing linkage, the Applicant in any event proposes to make a contribution of $1,000,000 to the Housing Production Trust Fund to support affordable housing initiatives in the District. In addition, if the Commission grants the Applicant relief from the requirement to buy additional TDRs under

Section 1709.24, the Applicant will contribute an additional $500,000 to the Housing Production Trust Fund, bringing the total contribution to $1.5 million.

B. Housing Linkage

Section 2404 of the Zoning Regulations generally requires a contribution toward affordable housing in connection with PUDs that propose an increase in office gross floor area over the amount that is permitted as a matter of right ("Housing Linkage"). However, under Section 2404.4(c), the proposed PUD is exempt from the Housing Linkage requirements because the PUD is located within the boundaries of the provisions of Chapter 17 (the DD Overlay).[1] Here, the PUD is within the boundaries of Chapter 17 in a number of ways:

- First, the PUD site is within the New Downtown Receiving Zone, which is specifically defined in Section 1709.16. The DD Overlay defines not only the boundaries of the DD Overlay itself, but also a number of receiving zones such as the New Downtown Receiving Zone. Therefore, the PUD is exempt because it is located within the boundaries of the New Downtown Receiving Zone, which is itself defined by the provisions of the Chapter 17.

- Second, the PUD is being processed pursuant to Section 1709.24. Section 1709.24 is a provision of Chapter 17 of the Zoning Regulations that applies to property located either within the DD Overlay or one of the receiving zones, all of which are defined in Chapter 17. The fact that the PUD's maximum permitted height and density is governed by Section 1709.24—rather than the provisions of Chapter 24—further emphasizes that the PUD is governed by the DD Overlay's specific provisions rather than the general PUD regulations.

- Thirdly, Section 1709.24 requires the Applicant to purchase TDRs to effectuate this PUD, the purchase of which furthers the policy goals of the DD Overlay with regard to providing preferred uses (housing, arts, retail) in other areas of the DD Overlay.

Both the receiving zones and Section 1709.24 are integral components of the DD Overlay scheme. These sections of the DD Overlay create the opportunities for development that provide incentives for property owners to fulfill the housing, retail, arts, and historic preservation goals of the downtown core. Put another way, the receiving zones and Section 1709.24 are already tied to linkage requirements.

Because the DD Overlay regime already imposes linkage requirements, the Council of the District of Columbia specifically chose to exempt PUDs subject to the DD Overlay

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[1] Section 2404.4(c) states, in relevant part, that "No housing requirement pursuant to this section shall apply to a PUD that is proposed for property located within the boundaries of the Downtown Development Overlay **provisions of chapter 17** of this title . . . ." (Emphasis added.)

provisions from the separate Housing Linkage requirements. Section 308b(7)(F) of the Comprehensive Plan Amendments Act of 1994 "Act", which created the Housing Linkage scheme, exempts applicants who obtain zoning density increases for development that is already subject to housing, retail, arts, or historic preservation requirements set forth in the DD Overlay. D.C. Code § 1-306.41(7). According to the Committee Report, the D.C. Council elected to exempt properties receiving zoning density increases through the DD Overlay provisions from Housing Linkage because (1) the DD Overlay provisions already include their own linkage policies and (2) overlaying Housing Linkage on top of the existing DD Overlay regulations would be confusing. See Committee Report at p. 7-8, 22-23.

Based on the foregoing guidance from the Council, when the Zoning Commission implemented the Housing Linkage requirements, it adopted Section 2404.4(c) of the Regulations, exempting all properties subject to the DD Overlay provisions from the Housing Linkage requirements. This exemption necessarily includes (1) properties that are within a receiving zone, the boundaries of which are spelled out in a provision of the DD Overlay, and (2) properties that utilize the additional 0.5 bonus available under Section 1709.24, another provision of the DD Overlay.

Notwithstanding the fact that Housing Linkage is not required, the Applicant is prepared to make a significant and meaningful contribution to the Housing Production Trust Fund as a public benefit of the PUD. The Applicant proposes to contribute $1,000,000.00 to the Housing Production Trust Fund, with such payment to be made prior to the issuance of the building permit for the Project.

C. Transferable Development Rights

Section 1709.24 authorizes an additional 0.5 FAR for PUDs that serve as a receiving lot for TDRs. This includes lots located both within the DD Overlay and within a receiving zone The legislative history of Section 1709.24 demonstrates that the section was originally intended to design review for projects seeking greater than 10.0 FAR of density. According to the Final OP Report on the DD Overlay, the purpose of the section was to:

> *Provide the opportunity for TDRs to be used as a part of a PUD in the C-3-C and C-4 zones. The practical effect is to add C-4 sites as possible receiving sites within a PUD. The reason for requiring a PUD is that these will be widely scattered sites, many of them building additions, where* ***review of the design compatibility of the bonus building*** *with its neighbors appears desirable.*

(Emphasis added.) The history suggests that the additional 0.5 FAR of density is gained through the acquisition of TDRs themselves, rather than through PUD-related "bonus" density. All the PUD serves to do is provide "design review."[2]

[2] At the time of adoption of the DD Overlay, Commission review of specific development projects was limited to PUDs. All other development was reviewed by the Board of Zoning Adjustment – including "design review" of large site development in the Neighborhood Commercial overlays. Through 1709.24, the DD Overlay first

We agree with OP that Section 1709 of the Regulations requires the purchase of TDRs not only for all density up to 10.0 FAR gained through § 1709.21, but also for the 0.5 FAR bonus density gained through § 1709.24. This interpretation appears to be consistent with the legislative history of the DD Overlay, which indicates that the focus of Section 1709.24 is to require design review by the Commission through the PUD process.

Based on the foregoing, Section 1709.24 requires the Applicant to acquire an additional 41,018 square feet of TDRs to construct the Project. The Applicant requests that the Zoning Commission waive the requirement of Section 1709.24 to buy TDRs for the additional density over 10.0 FAR that is gained through the PUD process.[3] Instead, the Applicant proposes to contribute an additional $500,000 to the Trust Fund, bringing the total contribution to $1.5 million. The Applicant proposes to contribute the payment prior to the issuance of the building permit for the Project.

D. Conclusion

It is the Applicant's position that because the PUD application is governed by Chapter 17 of the Zoning Regulations and the Property is defined as in a Receiving Zone pursuant to the DD Overlay, it is exempt from the housing linkage requirements of Chapter 24. Nonetheless, the Applicant proposes to make a $1 million contribution to the Housing Production Trust Fund. Further, if the Zoning Commission waives the requirement of Section 1709.24 of the Regulations for it to buy TDRs, the Applicants will contribute an additional $500,000 to the Fund.

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introduced the concept of the Zoning Commission, rather than the BZA, conducting such design review. The DD Overlay predated other overlays that require design review without a PUD, such as the CG Overlay or SEFC Overlay, by 15 years or so. It also predates the Commission's review of campus plan and further processing applications matters by 10 years.

[3] The Applicant has already acquired the TDRs required to bring the property up to a 10.0 FAR.