

September 26, 2014

VIA HAND DELIVERY

Anthony Hood
Chairperson
D C Zoning Commission
441 4th Street, NW, Suite 210
Washington, DC 20001

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2014 SEP 26 AM 10:22

**Re: Z.C. Case No. 14-05: Petition of Forest City Washington
Text Amendment to Section 1803 of the Zoning Regulations**

Dear Chairman Hood and Members of the Commission

At the Commission's June 9, 2014 regular public meeting, the Commission voted 5-0-0 to set down the above-referenced text amendment, as revised by the Office of Planning, for a public hearing

In response to questions raised by OP and the Commission, the Applicant provides the following additional information

- Attached is an excerpt from the Applicant's Payment in Lieu of Taxes Development Agreement with the District of Columbia that sets forth the affordable housing commitment. Briefly, the requirement is to set aside 20% of all residential units in rental housing as affordable units for households earning up to 50% of the Area Median Income
- The text amendment will permit a total of up to approximately 300 additional dwelling units on Parcels F, G, H, and I, assuming all four parcels are developed with residential uses utilizing the bonus density. The text amendment will therefore permit up to 60 additional affordable dwelling units

We look forward to the discussion of this amendment at an upcoming public hearing

Sincerely yours,

Phil Feola
Phil Feola

David Avitabile
David Avitabile

Enclosure
cc Ramsey Meiser

ZONING COMMISSION
District of Columbia

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2014, a copy of this letter was delivered by hand or electronic mail to the following:

Brandice Elliott
D C Office of Planning
1100 4th Street, SW, Suite E650
Washington, DC 20024

ANC 6D
1101 4th Street SW, Suite W130
Washington, DC 20024



David Avitabile

Section 2.03 *Independent Contractor.* In performing this Agreement, the Project Developer is an independent contractor and not the agent or employee of the District. The District shall not be responsible for making payments to any contractor, subcontractor, agent, consultant, employee or supplier of the Project Developer.

Section 2.04 *First Source Agreement and Participation Agreement.* Prior to the issuance of the initial series of PILOT Bonds or the disbursement of any funds pursuant to Section 3.05 or 3.06 hereof, the Project Developer will be required to enter into the First Source Agreement attached hereto as Exhibit C and the Participation Agreement attached hereto as Exhibit D. The Project Developer shall comply in all respects with the First Source Agreement and the Participation Agreement. In addition to such agreements entered into by the Project Developer, all other Owner/Developers of portions of the SEFC Development will be required to enter into substantially similar agreements with the District prior to the issuance of PILOT Bonds or the disbursement of any funds pursuant to Section 3.05 or 3.06 hereof for a Phase of the Project related to such portion of the SEFC Development and comply with such agreements in all respects.

Section 2.05 *Mixed Income Housing.* Twenty percent (20%) of the units comprising the Residential Component that are initially constructed as rental units shall be set aside for families earning fifty percent (50%) or less of area median income in accordance with the current low income restrictions for tax-exempt housing bonds; provided, that (i) sufficient volume cap exists and is allocated to finance the rental units described above and the District of Columbia Housing Finance Agency or any other District of Columbia instrumentality which has the authority and ability to issue tax-exempt private activity housing bonds (collectively, the "Agency") issues tax-exempt housing bonds to finance such rental units to the maximum extent permissible under current federal laws and rules relating to tax-exempt private activity bonds (provided that a financing at such amount is feasible from a credit perspective), within one (1) year after an Owner/Developer for such rental units, using commercially reasonable efforts, has submitted to the Agency a complete application for the issuance of such tax-exempt housing bonds and (ii) the Agency's fee structure, policies and procedures existing at the time application is made for financing are applied to such Owner/Developer and the development as they would be applied to any other developer seeking financing through the Agency. Notwithstanding anything to the contrary in the foregoing, in the event that the laws and rules relating to tax-exempt private activity bonds are changed after the date of this Agreement such that the low income restrictions (A) require more than twenty percent (20%) of the units in a project be set aside for families earning fifty percent (50%) or less of area median income or (B) specify a maximum income for eligible families for the low income units in a project which is less than fifty percent (50%) of area median income, the covenant set forth in the first sentence of this Section shall automatically become null and void and of no further force or effect.

Section 2.06 *Limited Applicability of Davis-Bacon Act.* Notwithstanding any other provision of this Agreement, the provisions of the Davis-Bacon Act, 40 U.S.C. § 276(a), and the Service Contract Act, 41 U.S.C. § 351(a) (the "Acts"), shall be applicable to the construction of the Project in the following limited manner: All Persons who are employed by Project Developer or any other contractor or subcontractor of Project Developer in the construction of the Project shall be paid, without subsequent deduction or rebate, not less than the relevant prevailing wage as prescribed by such Acts during the time that such Persons are working on the construction of the Project. The provisions of the Acts shall not apply to any construction or