

Hanousek, Donna (DCOZ)

From: Sean Ruppert <sean@opaldc.com>
Sent: Monday, June 01, 2015 4:56 PM
To: DCOZ - ZC Submissions (DCOZ)
Subject: ZC Case No 14-11 OPaL, LLC
Attachments: R4 Zoning Change Vesting OPaL, LLC.pdf

Mr. Hood: Please find attached a letter concerning two projects I own in the District in the R4 zone.

I have 29 homes under construction and 90 lots under contract in DC, some of which are in R4. These projects will be in jeopardy along with millions of dollars I have spent obtaining approvals on the projects without a fair vesting period.

Please see attached.

Sean Ruppert

Sean Ruppert
Principal | OPaL, LLC
6428 79th Street, Suite 100
Cabin John, MD 20818
301-320-3979
OPALdc.com



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Anthony J Hood
Chairman
Zoning Commission for the District of Columbia

June 1, 2015

Re ZC Case No 14-11

Dear Mr. Hood,

As a local developer with 29 homes currently under construction and 90 lots under contract in the District of Columbia, I have been closely following the proposed changes to the R-4 zone. Although I have been spending a great deal of time and resources following your (and the Office of Planning's) deliberation and recommendations for changes, I was alarmed to find upon the publication of your Proposed Rulemaking on May 1 – the very first time that we have seen the draft proposal in its entirety – that you have proposed no specific vesting period. I know this process began last year, however, the number of alternatives and the debates on each were fluid until this most recent publication. Without a sufficient vesting time period, we and other developers like us stand substantial exposure on investment we entered into years prior.

For example, I have two projects in the R-4 zone that have been in the pipeline for two years obtaining ANC and HPRB approvals. Once both projects obtained the necessary approvals (the most recent being HPRB conceptual approval in February), we turned our attention to the final stages of design to submit for permits. In both cases, we closed on construction loans based on the ANC and HPRB approvals. Neither of these projects required BZA approval and have been financed and designed based on a matter of right scenario. Now, after we finalized construction documents (perhaps the most expensive soft cost in the development lifecycle) for these projects, our ability to proceed is placed in jeopardy.

One thing sorely missing from the record in this case is a detailed explanation of the development lifecycle and the timeline for obtaining approvals. Since most of the work that the Zoning Commission does relates specifically to entitlements, I thought it might be helpful to outline the process before and after you (or the BZA, or HPRB) see a project in its conceptual stages.

Obviously, the first step is due diligence. [have you put a hold on putting r4 projects under contract while this is pending? If so, let's mention that here] In the case of the two projects I mentioned above, we purchased or have been under contract on those properties for more than two years. We made the decisions to purchase and develop these sites based on the existing R-4 regulations. We developed conceptual plans, took them to the ANC, and took them through HPRB, as each were in historic districts. Once we obtain those approvals, we try to quickly move forward to either finance the project and close on the loan (which costs hundreds of thousands of dollars and several months), or we move forward with the final architectural work, structural and civil engineering, which (also) costs hundreds of thousands of dollars. Regardless of how much you push your team to move quickly, the process of developing plans that can be submitted with our building permit application will still take many months.

Then the next hurdle DCRA. If you have never applied for a permit at DCRA, I would suggest you do it at least once. Although DCRA's own website states that they are striving to issue permits in 30-60 days, DCRA is currently so bogged down it will take us another 4 to 6 months (yes, an additional four to six months after we submit our application) to obtain permits.

The two projects I have great concern about are.





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645 Maryland Ave NE which has obtained ANC approval, Capitol Hill Restoration Society support, and HPRB approval in February. We contracted for the projects last summer and will be applying for permits within the next 1-3 months. To date I have spent \$150,000 obtaining the approvals. Based on those approvals I settled on the land in March of this year, with over half a million in equity. The proposed rulemaking setting forth the exact details of the new R-4 conversion regulations was only just published on May 1 (with a limited comment period and no additional public hearing). Thus, months after my initial investment and closing took place, I will lose everything and be forced to start from scratch or walk away from the delay and my investment, without a fair vesting period on the proposed changes to the R-4 zone.

777 Morton St NW has also obtained HPRB approval and ANC approval in September 2014. We are developing 24 condos in an R4 zone as By-Right. We have obtained permits for 16 of the homes and will be submitting for the final 8 homes within the next 60 days. I have spent \$350,000 on architectural and engineering for this project as well closed on the loan with another \$1,600,000 based on my R4 By-Right designation. Again, without a fair vesting period the portion of those sums related to the final 8 homes would be lost.

The Office of Planning has purportedly met with developers who explained that given the project lifecycle and the number of projects each small- to medium-sized developer takes on in any given period, a fair vesting period for this proposed change would be on the order of 18 months. A reasonable vesting period is required to prevent the significant investment many of us have made in the District of Columbia's economic health from going to waste, or creating a chilling effect on the development of affordable, accessible housing for residents across the District.

I also heard that the Zoning Commission believes 18 months is too long; that the development community has known about this proposal for nearly a year. Yes – we knew *something* was coming, but I reiterate that no one understood the specifics until May 1 when the Proposed Rulemaking was issued (I challenge you to watch the video of your own deliberations or read the transcript to see whether you can understand precisely what was being done from the public's perspective).

We are not asking for an opportunity to "game" the system but rather a fair recognition of the adverse impact this change will have on the R-4 community (we still submit that this proposal is a downzoning). Many of the life safety concerns voiced during the public hearings are now correctly being addressed by DCRA, such as enforcement of DC Building code to prevent construction adjacent to existing neighboring chimneys. Therefore, the request to apply a reasonable vesting period would simply account for the limited number of projects in the pipeline, that have worked with the ANC, completed design review, and developed architectural plans. I suggest a 6 month vesting period for projects that have not yet applied for building permits, and another 6-8 months for projects once application is made for building permits.

Sincerely, 

Sean Rupert
President
OPaL, LLC

