

August 23, 2018

VIA IZIS AND HAND DELIVERY

Anthony J. Hood, Chairman
Zoning Commission for the District of Columbia
441 Fourth Street, NW, Suite 210S
Washington, DC 20001

Re: Z.C. Order No. 14-12A – Application to Extend Z.C. Order No. 14-12 (“Order”) for a Period of Two (2) Years (“Extension Application”) – Request to Proceed with Consideration of the Extension Application

Dear Chairman Hood and Commissioners:

EAJ 1309 5th Street LLC (the “**Applicant**”) hereby supplements its application for a two (2) year extension of the Consolidated PUD approved by the Order for the property located at 1309-1329 5th Street, NE (Lot 800, Square 3591) (the “**Property**”). The Applicant respectfully amends its previous request that the Commission defer consideration of the Extension Application and now requests that the Commission schedule the Extension Application for consideration at the next available public meeting.

Background

The Order includes (i) a Consolidated PUD approval for the multistory “South Building” to be constructed over the existing Union Market building, and (ii) a First-Stage PUD approval of a residential or office and retail “North Building” to be constructed north of Union Market. The Order also approved two public plazas and below-grade parking to be constructed along with the North Building and shared between the two buildings.

Shortly after filing the original Extension Application, the Applicant submitted a separate application for a modification of the Consolidated PUD and First-Stage PUD approved in the Order and a Second-Stage PUD application relating to the North Building (collectively, the “**Modification and Second-Stage Application**”). Among other things, the Modification and Second-Stage Application sought to change the timing of construction of the two buildings, to shift density between the two buildings from the allocation approved by the Order, to change the mix of uses approved in the Order by replacing the approved theater use with an expanded office use, and to obtain approval of the Second-Stage PUD for the North Building.

As noted above, in concert with filing the Extension Application, the Applicant previously requested that the Commission defer consideration of the Extension Application until Final Action (if it was to be granted) on the Modification and Second-Stage Application so that all pending elements of the project approved in the Order (the “**Project**”) could be considered simultaneously and so that the Commission could review the requests more efficiently. The Applicant, by letter to the Commission filed simultaneously with this request, withdraws the Modification and Second-Stage Application and now amends its prior request to schedule consideration of the Extension Application with the decision on the Modification and Second-Stage Application. Instead, the Applicant now requests consideration of only the Extension Application at the Commission’s earliest opportunity, as a result of the further evolution of the Project, as discussed below.

Justification for Proceeding with the Extension Application Now

The Applicant now seeks to proceed with the Extension Application on a timeline independent of that for the Modification and Second-Stage Application. At the time the Applicant filed the original Extension Application, the Applicant was under contract with a development partner to develop the North Building and South Building together. After being under contract for a year, the Applicant’s development partner on the Project allowed its contract with the Applicant to terminate because of such partner’s concerns regarding the current PUD appeals climate in DC. More specifically, the development partner is also the development partner with an affiliate of the Applicant on a nearby PUD, which was appealed at the same time as the contract for the instant property terminated.

The Applicant and its development partner had spent the period since the filing of the Extension Application advancing the plans for the Modification and Second-Stage Application. With the development partner exiting the Project, the Applicant now intends to move forward with the Extension Application on a standalone basis and proceed with the Consolidated PUD.

Withdrawal of the Modification and Second-Stage Application

In order to move both the North Building and South Building forward with the utmost expedience, the Applicant is withdrawing the Modification and Second-Stage Application simultaneously with this filing. Going forward, the Applicant is prepared to proceed without most of the requests in the Modification and Second-Stage Application, which included:

- The request to shift the approved density between the two buildings from the allocation approved by the Order, and
- The request to change the approved mix of uses and requesting to replace the approved theater use with an expanded office use.

Additionally, the Applicant plans to seek approval of a new Second-Stage PUD for the North Building separately from the Consolidated PUD. The Applicant is currently working to replace its development partner for the North Building and anticipates the resubmission of a Second-Stage PUD for the North Building in the near term. The Applicant has redoubled its efforts to bring the originally approved Project to reality.

Justification for the Extension Application

The Extension Application satisfies the relevant standard set forth in the Zoning Regulations for an extension of an approved PUD. Further information regarding the Applicant's need for this Extension Application and the satisfaction of the standards for such extension (pursuant to 11-Z DCMR § 705) are set forth with more specificity in Exhibits 1 and 1E in the record. For convenience, the Applicant restates some of the information from its previous filing here. The Applicant notes that these factors satisfy the "good faith" standards required for Order extensions under the Regulations, as previously described in Exhibits 1 and 1E.

Specifically, the challenges contributing to this Extension Application stem largely from:

- The loss of the development partner for the North Building due to the PUD appeals climate;
- The South Building's movie theater's failure to perform under its lease, resulting ultimately in the loss of the theater lease commitment;
- The speculative nature of the office component of the South Building;
- The Applicant's inability to commit additional capital to the South Building without a theater or office tenant;
- The complex structural engineering and high construction costs associated with constructing over the existing Union Market;
- The Applicant's self-imposed requirement to minimize adverse impacts to the existing tenants and businesses in the Market; and
- Uncertainty of the timing of development of the adjacent Gallaudet-owned parcel to the south, which the Applicant currently licenses for much needed parking for the Market and other businesses in the area.

As noted above, the South Building approved in the Order contemplates constructing eight (8) new stories of the South Building above the existing Union Market without interrupting activity within or closing the Market. As is unlikely to be surprising, such construction effort presents substantial technical and engineering challenges. To address these challenges, the Applicant has retained specialized expertise, including structural engineers who specialize in bridge construction, to solve the technical challenges involved. In addition, the financing associated with such complicated construction has required additional time to investigate and fund. These challenges have taken longer to resolve than the Applicant originally anticipated. The Applicant also seeks this extension of the Order for the South Building in order to continue to refine the design and construction methods and to prelease the office and theater components.

Despite these challenges, since the issuance of the Order and the submission of the Extension Application, the Applicant has continued its work to find development partners for the North and South Buildings. Each discussion and negotiation with potential development partners,

office tenants and theater operators introduces additional design and cost. In addition, these discussions require due diligence periods and schedule contingencies due in part to the current climate of challenges to PUD Orders. As noted above, for the past couple of years, the PUD appeals climate has had a chilling effect on the extent to which development partners, and funding sources, are willing to engage on the Project.

The Applicant believes that it has determined a path that would allow for the construction of the originally approved South Building without the modifications and specific design requested in the Modification and Second-Stage Application, but such path nonetheless requires a commitment from a theater operator and an office tenant. Outreach to the original theater partner and other theater operators has revived the theater concept as part of the South Building, and is discussed more fully below.

The original Consolidated PUD for the South Building contemplated a 42,000 SF “art house” theater. As described in the initial Extension Application, the movie theater industry, like most life-style retail, has undergone massive change over the last five years due to technology, online distribution, and industry shifts towards content creation. Current movie theater prototypes have significantly fewer screens and seats, have upscale food and beverage services, and provide much more diverse offerings including live event streaming, private screenings and enhanced conference and communication services. Recently, the Applicant has met with three theater operators, in addition to the original operator. All four such theater operators have expressed interest in a four- to five- screen theater with event space above the Market. The Applicant has engaged in similar efforts to bring office tenants to the upper floors of the South Building.

Since the Order issuance, the Applicant has expended significant time and resources to identify development partners and has funded a wide variety of expenditures to facilitate the implementation of the Project. A list of work and costs funded by the Applicant totaling approximately \$2,020,000 was submitted into the record as Exhibit 1E. The Applicant notes that such \$2,020,000 figure has now increased to \$2,150,000. Taken in totality, the above efforts demonstrate the diligent good faith of the Applicant to successfully implement the Project. The Applicant has consistently worked to bring the Project to fruition throughout the period of validity of the Order.

The conditions beyond the Applicant’s reasonable control summarized above—including the continued search for suitable development partners and tenants and efforts and expenditures to achieve the Project—combine to satisfy Section 705.2(c) for an extension of the Order. As a result of such conditions, the Applicant has been unable to file an application for a building permit for the South Building to date.

The Applicant notes that the Office of Planning submitted a report supporting the Extension Application (see Exhibit 4 in the record). The Applicant also notes that this is the first extension request by the Applicant and, if approved, it will afford time to pursue the originally-approved Project.

Simultaneous Filing

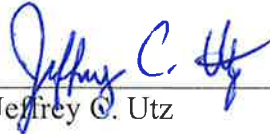
As indicated above, the Applicant has been diligently and in good faith pursuing development of the Project and as such will formally withdraw the previously-submitted Modification and Second-Stage Application simultaneously with this filing to allow for the prior approval to be implemented. This will also allow the Applicant to return to the original plan for the South Building immediately.

In general, the Applicant notes that the above-described approach hews more closely to the Project originally envisioned and approved in the Order and has additional virtues of procedural simplicity relative to the proposal in the Modification and Second Stage Application. The Applicant believes that the project continues to be improved and to progress towards implementation.

The Applicant would be happy to provide additional information or answer any questions that the Commission might have.

Thank you for your attention to this application.

Respectfully submitted,



Jeffrey C. Utz



David A. Lewis

Certificate of Service

I certify that on August 23, 2018, I delivered a copy of the foregoing document via hand delivery or first class mail to the addresses listed below.



David A. Lewis

Jennifer Steingasser (*3 copies, via courier*)

Joel Lawson

Brandice Elliott

District of Columbia Office of Planning

1100 4th Street, SW, Suite 650E

Washington, DC 20004

Anna Chamberlin (*2 copies, via courier*)

Jonathan Rogers

District Department of Transportation

55 M Street, SE, Suite 400

Washington, DC 20003

ANC Commissioner Peta-Gay S. Lewis (5D01) (*1 copy, via courier*)

1868 Corcoran Street, NE

Washington, DC 20002

Keisha L. Shropshire – ANC 5D02 (*1 copy, via US mail*)

1239 16th Street, NE

Washington, DC 20002

James Butler – ANC 5D03 (*1 copy, via US mail*)

1600 Maryland Avenue, NE

Washington, DC 20002

Bernice S. Blacknell – ANC 5D04 (*1 copy, via US mail*)

2114 I Street, NE #3

Washington, DC 20002

Kathy Henderson – ANC 5D05 (*1 copy, via US mail*)

1807 L Street, NE

Washington, DC 20002

H. Yvonne Buggs – ANC 5D06 (*1 copy, via US mail*)

1113 Montello Avenue, NE

Washington, DC 20002

Clarence Lee – ANC 5D07 (*1 copy, via US mail*)
1519 Trinidad Avenue, NE
Washington, DC 20002