

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

KYRUS L. FREEMAN
202-862-5978
kyrus.freeman@hklaw.com

November 18, 2016

VIA IZIS AND HAND DELIVERY

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

**Re: Z.C. Case No. 16-10 - Post-hearing Submission
Consolidated PUD & Related Map Amendment @ Square 3588**

Dear Members of the Commission:

On behalf of EAJ 400 Florida Avenue, LLC (the “Applicant”), we hereby submit the following information requested by the Zoning Commission at the October 27, 2016 public hearing regarding the proposed planned unit development (“PUD”) and Zoning Map amendment at 400 Florida Avenue, NE (the “PUD Site”).

1. Parking

A. Contract for Off-site Parking Spaces

In lieu of providing an on-site parking garage, the Applicant has secured 50 off-site parking spaces located at Square 3587, Lots 0827, 0828, 7012 and 7013, for the life of the project. As noted in the memorandum from EDENS, owner of Square 3587, Lots 0827, 0828, 7012 and 7013, and attached hereto as Exhibit A, EDENS is committed to providing the 50 parking spaces in perpetuity. The EDENS parking site is located within Florida Market and is approximately one block north of the PUD Site, as shown on Sheet A002 of the revised Architectural Plans and Elevations (the “Revised Plans”) attached hereto as Exhibit B.

B. Feasibility of Constructing On-site Parking Garage

At the public hearing, the Zoning Commission requested additional information regarding the difficulty in providing on-site, below-grade parking. As shown on the conceptual parking plan attached hereto as Exhibit C an on-site parking garage would be highly inefficient on the narrow site, and would result in a maximum of 22 parking spaces per level.

Moreover, as noted in the Parking Garage Cost Analysis prepared by Turner Construction Company and attached hereto as Exhibit D, the cost of constructing a single parking level on the PUD Site would result in an expenditure of approximately \$145,485.00 per space, which is well beyond the typical cost budgeted for a single parking space. As set forth in Exhibit D, the average cost per parking space averaged over 12 recent development projects was \$48,888.00, which is almost \$100,000 less than the anticipated cost per space at the PUD Site.

The unusually high cost is a result of a variety of factors, including the following:

- i. The PUD Site's long and narrow shape is inefficient for sheeting and shoring, resulting in approximately \$23.46 per square foot, compared to approximately \$12.92 per square foot for a more regularly-shaped site. This represents an 82% premium;
- ii. The size of the garage also carries a premium for the structure. The typical structure is approximately \$40 per square foot, compared to the PUD Site, which carries approximately \$62 per square foot; and
- iii. The inefficient garage layout requires the ramp to run along the long side of the PUD Site, thus only allowing for one parking space per 931 square feet of garage area, instead of the average parking space per 444 square feet of total garage area.

As noted in Exhibit D, other factors affecting the cost of adding a parking garage include the PUD Site's history as a former gas station, the need for dewatering, and significant additional fixed costs including elevator stops and drainage systems (which fixed costs would be distributed among relatively few parking spaces as compared to a larger garage).

C. Residential Parking Permit Restrictions

The Zoning Commission requested that the Applicant provide detailed information about enforcement of the proposed RPP restriction. In response, the Applicant offers the language listed below to be included as a condition in the Zoning Commission Order, which would provide adequate enforcement of the RPP restriction. The Applicant also notes that the PUD Site is currently not eligible for RPP, and as noted below, the Applicant will not seek or support any change to designate the PUD Site becoming RPP-eligible in the future.

Prior to issuance of a Certificate of Occupancy for the residential portion of the building, the Applicant shall demonstrate to the Zoning Administrator that it has recorded a covenant among the Land Records of the District of Columbia prohibiting any tenant of the building from obtaining an RPP for so long as the PUD Site is used as an apartment building.

For the life of the Project, the Applicant shall: (i) not seek or support any change to designate the PUD Site as becoming eligible for RPP; (ii) include in its residential leases a provision that prohibits tenants from obtaining an RPP for the PUD Site from the DMV,

under penalty of lease termination and eviction; (iii) obtain written authorization from each tenant through a required lease provision that allows the DMV to release to the Applicant every six months any and all records of that tenant requesting or receiving an RPP for the PUD Site.

2. Flexibility to Provide Rooftop Bar Use

At the public hearing, the Applicant discussed the option of providing a bar or restaurant on the roof of the hotel portion of the building. Pursuant to 11 DCMR § 411.1(c), a “nightclub, bar, cocktail lounge, or restaurant use shall only be permitted as a special exception if approved by the Board of Zoning Adjustment.” The BZA is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) to grant special exceptions where the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. Pursuant to 11 DCMR § 2405.7, the Zoning Commission may approve uses that are permitted as special exceptions and would otherwise require the approval of the BZA. Thus, the Applicant herein requests that the Zoning Commission approve flexibility to provide a rooftop bar/restaurant on the hotel portion of the building.

The Applicant’s request complies with the special exception standard, since the proposed bar/restaurant use is consistent with the goals of the penthouse regulations to provide habitable space in penthouses and to provide contributions to the Housing Production Trust Fund (“HPTF”) for the production of affordable housing. In this case, the Applicant would be required to make a total contribution of over \$31,000 to the HPTF, with no less than half of the contribution made prior to the issuance of a building permit for construction of the penthouse habitable space, and the balance of the contribution made prior to the issuance of a certificate of occupancy for any or all of the penthouse habitable space. *See* 11 DCMR § 1505.16.

Moreover, given that the PUD Site will be located in the C-3-C District, commercial uses are anticipated, and will otherwise be provided in the ground and second-floor levels of the hotel. Establishing a bar/restaurant in the penthouse will create a unique and enjoyable dining experience for hotel guests, visitors, and members of the public. Further, the bar/restaurant will simply incorporate a “warm-up” kitchen, and will not include installation of any stoves, air vents, or other large cooking equipment. The Applicant will also ensure that the bar/restaurant does not create any objectionable noise or light impacts on surrounding properties. Thus, the requested use will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map, and will not tend to adversely affect the use of neighboring property.

3. Revised Architectural Plans and Elevations

At the public hearing, the Commission requested several additional architectural drawings to help clarify certain aspects of the project. In response, the Applicant has provided the following sheets within the Revised Plans (Exhibit B). The Revised Plans are a complete set of PUD drawings are intended to replace the drawings previously submitted to the record at Exhibits 3A, 12, 17H, and 27A.

- a. A blow-up showing the proposed building projections and clarifying that the multiple projections on Florida Avenue are separate and code-compliant (Sheets A113-114);
- b. Sheets showing the revised building color, which is now a grey metal panel instead of a white metal panel (e.g. Sheets A201-202, Sheet 403);
- c. A blow-up and more specific design showing the frieze detail (Sheet A404);
- d. Blow-up plans, sections, and perspectives of the roof, including a section through the parapets on both the residential and hotel portions of the building (Sheets A110-111, A210-215, A301-306), showing the following:
 - i. The proposed uses and layout of the roof, including the restaurant/bar and amenity spaces (Sheet A110),
 - ii. A rooftop lighting plan (Sheets L02B, L02C, and L02D), and
 - iii. Indication that the penthouse on the hotel portion of the building cannot be shifted to comply with the 1:1 setback requirement from the rear exterior wall (Sheet A111);
- e. Sight line drawings from the sidewalk on 4th Street looking south at the penthouse. As shown on these drawings, the requested setback relief is not perceptible from the street (Sheet A216-217);
- f. A drawing showing that the handrails on the roof are part of the parapet (Sheet A304-305);
- g. A revised IZ unit layout showing that the 50% and 80% IZ units are evenly distributed between the front and rear of the building (Sheets A103-109A); and
- h. A revised elevation showing proposed signage that reduces the size of the proposed blade sign (Sheet A221).

4. Responses to Further Comments from the Office of Planning

At the public hearing, the Office of Planning requested that the Applicant provide a more detailed ground floor plan that demarcates space for specific uses, including a designated location for the business incubator space. The Office of Planning also requested additional information regarding how the local start-up businesses would be selected.

As shown in the Revised Plans, the Applicant has provided more clarity on the uses, layout, and program of the hotel's ground floor, including the location of the business incubator space. As shown on the Revised Plans, the business incubator space will be separated from the rest of the hotel lobby and will include approximately 200 square feet of space to fit up to three incubators. The cost associated with providing this space is approximately \$450 per desk/month

(\$1,800 per month), \$21,600 per year, and \$648,000 for each 30 years of the project in uninflected present dollars. The incubator space will be provided for the life of the project, and thus amounts to a significant, multi-million dollar public benefit.

The incubator spaces will be offered to District of Columbia residents as follows: The hotel operator will seek compatible start up business candidates who want to germinate their business concept in the lively and diverse hotel environment. The hotel operator will interview candidates based on compatibility with the hotel ethos, style and core mission values. The candidates will be nominated by the Single Member District Commissioner from ANC 5D, and if no candidates are nominated, then by the full ANC 5D. If no ANC 5D nominations are successful, then the opportunity would be open to any District resident. The incubator spaces will offer free computer use, printing, and wifi.

At the public hearing, the Office of Planning also testified that the art gallery space should not be considered a public benefit or amenity without a demarcated, separate gallery area. In response, the Applicant hereby removes the art gallery from its proffered public benefits and amenities. Although the building will include art throughout the hotel and residential components, it will not be considered a “benefit” of the PUD. Instead, the Applicant offers a new proffer to rebuild the sidewalks and curbs and install trees on the east side of 4th Street and the west side of 5th Street, NE, from the alley to Morse Street, NE. These improvements will be designed and constructed to match the sidewalks adjacent to the PUD Site and will be consistent with DDOT standards.

5. Responses to Comments from ANC 6C

At the public hearing, Commissioner Goodman testified on behalf of ANC 6C, the ANC located across Florida Avenue from the PUD Site. Since then, representatives of the Applicant have been in contact with Commissioner Goodman to address ANC 6C’s concerns. The following items were raised at the public hearing, and the Applicant’s responses are set forth below:

- a. Commissioner Goodman stated that ANC 6C was supportive of the Applicant providing off-street parking spaces for the PUD in the parking garage owned by EDENS and located at Square 3587, Lots 0827, 0828, 7012 and 7013. However, Commissioner Goodman was concerned about the Applicant’s proposal to construct minimal on-site parking and provide the off-site parking spaces for only 15 years. In response, the Applicant herein commits to providing the off-site parking at the EDENS site for the life of the project, and has demonstrated that the spaces are in close proximity to the PUD Site. In addition, the Applicant agreed to implement a valet plan for the hotel portion of the building, which will provide clear direction to hotel guests about how and where to leave their vehicle.
- b. Commissioner Goodman also testified that the Project did not create sufficiently active ground floor retail uses, and that the ground floor should have as much retail as possible. In response, the Applicant revised the ground floor plan and provided more clarity on the overall uses, layout, and program of the hotel’s ground floor, which will

create significant street activation and a vibrant pedestrian environment (*see* above and attached ground floor plan). The Applicant will also include the following language as a condition in the PUD Order:

Prior to issuance of a Certificate of Occupancy for the applicable residential or hotel portion of the Project, respectively, the Applicant shall demonstrate to the Zoning Administrator that it has ensured active retail space at the ground level of the building by implementing the following design techniques:

- i. Devote not less than 50% of the surface area of the streetwall(s) at the ground level to display windows having clear or clear/low-emissivity glass, except for decorative or architectural accent, and to entrances to the building;
 - ii. Design the building so as not to preclude an entrance every 40 feet, on average, for the linear frontage of the building on Florida Avenue, including entrances to ground floor uses and the main lobby; and
 - iii. At the ground floor level of the building, provide a uniform minimum clear floor-to-ceiling height of at least 10 feet.
- c. Commissioner Goodman also requested that the Applicant provide additional bicycle parking interior to the building. In response, the Applicant more than doubled the total number of interior bicycle parking spaces in the residential portion of the building from 44 spaces to 96 spaces (*see* Sheet A102 of Exhibit B). This bicycle parking will be conveniently located on the ground floor of the building.
- d. Commissioner Goodman stated that the proposed public benefits and amenities were insufficient. In response, the Applicant added the following new public benefits to its previously-proposed benefits package: (i) the Applicant will pay the costs associated with rebuilding the sidewalks and curbs and installing trees on the east side of 4th Street and the west side of 5th Street, NE, from the alley to Morse Street, NE. These improvements will be designed and constructed to match the sidewalks adjacent to the PUD Site and will be consistent with DDOT standards; (ii) the Applicant increased its employment proffer, such that it will ensure that 51% of all hotel-related jobs will be reserved for District residents; and (iii) the Applicant quantified the cost of providing the business incubator space in the hotel, which amounts to approximately \$21,600 per year, and a \$648,000 benefit for each 30 years of the project. The incubator space will be provided for the life of the project. Therefore, the Applicant believes that it is providing a substantial public benefits and amenities package.
- e. Finally, prior to the public hearing, Commissioner Goodman and other ANC 6D Commissioners commented that the building's architecture needed significant design improvements. Since the hearing, the Applicant revised the color of the residential portion of the building to appear more residential and provide for easier maintenance, added further articulation on the hotel portion of the building through development of

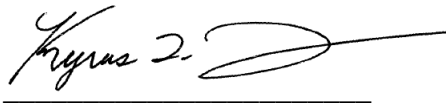
a brick frieze detail that reflects the frieze on the existing building, and reduced the size and extent of building signage. Thus, the Applicant believes that the building design has been further enhanced since the hearing in response to comments from Commissioner Goodman.

6. Proposed Findings of Fact and Conclusions of Law

As requested by the Commission, the Applicant also hereby submits proposed findings of fact and conclusions of law (Exhibit E).

Thank you for your attention to these matters. We look forward to your further consideration of this project at the December 12, 2016 public meeting.

Very truly yours,

By: 

Kyrus L. Freeman
Jessica R. Bloomfield
800 17th Street, N.W. #1100
Washington, DC 20006
(202) 955-3000

cc: Advisory Neighborhood Commission 5D (with enclosures, via U.S. Mail)
Peta-Gay Lewis, ANC 5D01 (with enclosures, via U.S. Mail)
Tony Goodman, ANC 6C06 (with enclosures, via U.S. Mail)
Matthew Jesick, D.C. Office of Planning (with enclosures, Via Email)
Jonathan Rogers, District Department of Transportation (with enclosures, Via Email)
Jeff Kaufman, Edens (with enclosures, Via Email)