

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

Jessica R. Bloomfield
202.469.5272
Jessica.bloomfield@hklaw.com

February 17, 2023

VIA IZIS

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

**Re: Request for Two-Year Extension of Time to Begin Construction of Approved
Planned Unit Development
4611-4615 41st Street, NW (Square 1769, Lot 32)
Z.C. Order No. 18-03 and 18-03(1)**

Dear Members of the Zoning Commission:

On behalf of Dancing Crab Properties, LLC and 10009 Field Road, Inc. (together, the “Applicant”), this letter serves as a request for a two-year extension of the time period in which to begin construction of the approved building (the “Building”) to be located at 4611-4615 41st Street, NW (Square 1769, Lot 32)¹ (the “Property”).

Development of the Property was approved pursuant to Z.C. Order No. 18-03 (Exhibit A), which granted a consolidated Planned Unit Development (“PUD”) and a related Zoning Map Amendment from the MU-4 zone to the MU-5-B zone to develop the Property with a new mixed-use residential building with approximately 41 residential units and restaurant/bar use on the ground floor and in penthouse habitable space. The order was approved on December 17, 2018, with an effective date of March 1, 2019. Pursuant to Z.C. Order No. 18-03, Decision No. F.2, the Order was valid for a period of two years, such that a building permit application was required to be filed no later than March 1, 2021, and construction was required to commence no later than March 1, 2022.

Pursuant to Z.C. Order No. 18-03(1) (Exhibit B), the Office of Zoning issued an administrative Covid-19 one-year extension of the original Order, such that a building permit application was required to be filed no later than March 1, 2022, and construction was required to commence no later than March 1, 2023.

¹ At the time that Z.C. Order No. 18-03 was issued, the Property was known as Lots 1 and 2 in Square 1769. A subdivision plat was recorded in the Office of the Surveyor on September 30, 2019, at book 216, page 78, which consolidated Lots 1 and 2 into a single record lot that is now known as Lot 32 in Square 1769.

The Applicant filed a building permit application within the required time limits set forth in Z.C. Order No. 18-03(1). However for the reasons stated herein, the Applicant respectfully requests a two-year extension of the deadline to begin construction of the approved PUD. If approved, construction would be required to begin no later than March 1, 2025.

The subject application is filed pursuant to Subtitle Z, Chapter 700 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Code (“11 DCMR”) for good cause shown herein. As required by 11-Z DCMR § 1600.10(c), a filing fee of \$1,500 is included with this application. An authorization letter from the Applicant is attached at Exhibit C, and a signed Application Signature Form 100 is attached at Exhibit D.

I. JURISDICTION OF THE ZONING COMMISSION

Pursuant to 11-Z DCMR § 705.2, the Zoning Commission is authorized to extend time periods of PUD orders for good cause provided the following conditions are met:

1. The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
2. There is no substantial change in any of the material facts upon which the Commission based its original approval of the application that would undermine the Commission’s justification for approving the original application; and
3. The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in 11-Z DCMR § 705.2(c).

The sole substantive criterion for determining whether a PUD should be extended is whether there exists “good cause shown.” The Zoning Regulations define “good cause shown” in 11-Z DCMR § 705.2(c) as evidence of one or more of the following:

1. An inability to obtain sufficient project financing for the development, following an applicant’s diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant’s reasonable control;
2. An inability to secure all required governmental agency approvals for a development by the expiration date of the order because of delays in the governmental agency approval process that are beyond the applicant’s reasonable control; or
3. The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant’s reasonable control that renders the applicant unable to comply with the time limits of the order.

II. COMPLIANCE WITH STANDARDS FOR EXTENDING PUD VALIDITY

A. Extension Request Served on All Parties

Other than the Applicant, the only other party to the case was Advisory Neighborhood Commission (“ANC”) 3E. As indicated in the Certificate of Service attached hereto, the Applicant served this application on ANC 3E, thus providing the required time period to respond.

B. No Substantial Change in Material Facts

There has been no substantial change in any of the material facts upon which the Zoning Commission based its approval in Z.C. Order No. 18-03. As described below, the Applicant applied for a building permit within the required timeframes and is in the process of obtaining approvals from District agencies. However, the permit approval process has taken longer than expected, and as a result the Applicant will be unable to obtain all required permits and start construction of the Building prior to the March 1, 2023 deadline. Despite not having complete permit approval, the Applicant remains fully committed to moving forward with constructing the Building and fully complying with all conditions and obligations imposed as part of the PUD approval.

C. Good Cause Shown

Pursuant to 11-Z DCMR § 705.2(c)(2), the Zoning Commission is authorized to grant an extension of PUD validity for projects where the applicant demonstrates with substantial evidence “[a]n inability to secure all required governmental agency approvals for a development by the expiration date of the order because of delays in the governmental agency approval process that are beyond the applicant’s reasonable control.”

As set forth in the affidavit of Tom McDowell, representative of the Applicant (the “Affidavit”) (Exhibit E), this application satisfies the criteria of 11-Z DCMR § 705.2(c)(2) and thus meets the requirements for extending the deadline to start construction of the Building. The Applicant has taken many steps to move the project forward, including preparing and recording the required PUD covenant, working diligently to apply for and obtain raze permits to demolish the existing structures on the Property, and to apply for and respond to comments from District reviewing disciplines as part of the building permit process, as set forth below:

- The Applicant applied for and received raze permits to demolish the existing structures on the Property on September 20, 2021 (Permit Nos. R2000073 and R2000077). *See* Raze Permits at Exhibit 1 to the Affidavit. As shown on the photographs of the Property attached as Exhibit 2 to the Affidavit, the buildings on the Property have been fully demolished pursuant to the Raze Permits.
- The Applicant timely filed a building permit application with the Department of Buildings (“DOB”) on January 20, 2022 (Permit No. B2203165), which was accepted as complete on January 30, 2022, and referred to the reviewing disciplines on February 1, 2022. Since then, the Applicant has received and responded to four complete rounds of comments from DOB reviewers, and as of the date of this filing has received permit approval from almost

all of the reviewing disciplines and is currently in its fifth round of comments to resolve the final outstanding items. *See* ProjectDox Building Permit Workflow Routing Slip and Department Review Status List at Exhibit 3 to the Affidavit.

- The Applicant submitted an application for a bay window projections permit on January 19, 2022, which was approved and issued on February 15, 2023. *See* TOPS Application Status Page and Permit No. PA388779 at Exhibit 4 to the Affidavit.
- The Applicant submitted a public space permit application on January 19, 2022, which was approved on February 16, 2023, with the permit to be issued upon payment of fees. *See* TOPS Application Status Page at Exhibit 5 to the Affidavit.
- The Applicant prepared the PUD Covenant required by Z.C. Order No. 18-03, Conclusion of Law No. F.1, which it recorded in the Land Records of the District of Columbia on February 17, 2022, as Instrument No. 2022018979 (Exhibit 6 to the Affidavit).
- The Applicant submitted a draft IZ Covenant and Certificate of Inclusionary Zoning Compliance, which was approved by DHCD on October 6, 2022.
- The Applicant prepared and submitted an Environmental Impact Screening Form (“EISF”) Application and associated documentation and correspondence to DOEE on May 5, 2022, and by letter dated February 7, 2023, DOEE issued an Environmental Assessment Report for the Project, concluding that it found “no apparent significant adverse impact or likelihood of substantial negative impact on the environmental as a result of the proposed project.” *See* DOEE Memo and Environmental Assessment at Exhibit 7 to the Affidavit.
- In anticipation of receiving its building permit in the very near future, on January 5, 2023, the Applicant posted notice signs on the Property indicating the filing of a building permit, which signs are required to be posted for at least 30 days immediately prior to the issuance of a building permit. *See* 10-A DCMR § 106.2.18.3.1.1 and Photographs of the Posted Signage at Exhibit 8 to the Affidavit.
- As it relates to construction work, the Applicant submitted an application for an Excavation Sheeting and Shoring permit on January 17, 2023, which is currently under review by DOB (Permit No. SH2300009). *See* Sheeting and Shoring Department Review Status and TOPS Application Status Page at Exhibit 9 to the Affidavit.

Based on the foregoing summary of the information provided in the Affidavit, it is clear that the Applicant has taken many steps to move forward with site development, even though it has been unable to secure all required governmental agency approvals to pull the final building permit and begin construction. As evidenced by the Applicant’s recent activity working with DOB, including most recently submitting a fifth round of comment responses for the full building permit, the Applicant is still committed to moving forward with construction of the Building. The Applicant has invested substantial resources in the Property over many years, including legal, architectural, engineering, permitting, and other consulting fees, such that there is no financial advantage for the Applicant not to move forward with construction of the Building, and has every incentive to do so as soon as feasible.

III. NO HEARING NECESSARY

Pursuant to 11-Z DCMR § 705.7, the Commission shall hold a public hearing on a request for an extension of the validity of an application approval only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the proceeding concerning any of the criteria in 11-Z DCMR § 705.2. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.

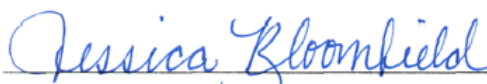
A hearing is not necessary for this request since there are not any material factual conflicts generated concerning any of the criteria set forth in 11-Z DCMR § 705.2. The only other party to this case was ANC 3E, to whom the Applicant has served a copy of this request. There is no dispute that the Applicant has worked diligently to obtain a building permit and respond to many rounds of comments from DOB reviewers. Indeed, the Applicant believes that the final building permit should be issued in the very near future, but that such delay has had the effect of delaying the start of construction. Thus, there cannot be any material factual conflicts generated concerning any of the criteria by which the Zoning Commission is required to consider this request.

IV. CONCLUSION

In light of this demonstration of good cause and for the reasons stated herein, the Applicant respectfully requests that the Zoning Commission approve a two year extension of time to start construction of the Building, such that construction must begin no later than March 1, 2024. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 
Kyrus L. Freeman
Jessica R. Bloomfield

Attachments

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2023, copies of the foregoing extension application were served by electronic mail on the following at the addresses stated below.

District of Columbia Office of Planning

Jennifer Steingasser

jennifer.steingasser@dc.gov

Joel Lawson

joel.lawson@dc.gov

Crystal Myers

crystal.myers@dc.gov

District Department of Transportation

Aaron Zimmerman

aaron.zimmerman@dc.gov

Advisory Neighborhood Commission 3E

Commissioner Jonathan Bender

ANC 3E Chair

3E@anc.dc.gov

3E03@anc.dc.gov

jonbender@gmail.com

Commissioner Jeffrey Denny

ANC 3E05

3E05@anc.dc.gov



Jessica R. Bloomfield

Holland & Knight, LLP