

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

Christine Moseley Shiker
202.457.7167
christine.shiker@hklaw.com

Jessica Raabe Bloomfield
202.469.5272
jessica.bloomfield@hklaw.com

August 20, 2024

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 an Approved Design Review Application
Z.C. Order No. 22-28
1100 South Capitol Street, SE (Square 698, Lots 814 and 817)**

Dear Members of the Zoning Commission:

On behalf of 1100 SOUTH CAPITOL, LLC (the “Applicant”), the owner of property located at 1100 South Capitol Street, SE (Square 698, Lots 814 and 817) (the “Property”), this letter serves as a request for a two-year extension of the time period to file a building permit application and begin construction for the approved Design Review application approved for the Property. The Applicant respectfully requests that this application be considered by the Zoning Commission at its September 26, 2024, public meeting.

The subject application is filed pursuant to Subtitle Z § 705 of the Zoning Regulations. As required by Subtitle Z § 1600.10(c), a filing fee of \$2,093.17 is included with this application, which represents 10% of the original hearing fee. Attached as Exhibit A is an authorization letter from the Applicant, and attached as Exhibit B is Application Signature Form 100, signed by the Applicant.

I. BACKGROUND

A. The Property

The Property is located on the west side of Square 698 and is bounded by L Street, SE to the north, a 15-foot wide public alley to the east, private property to the south, and South Capitol Street to the west. The Property includes approximately 32,556 square feet of land area and is improved with a surface parking lot. The Property is zoned D-5 and is located within the M and South Capitol Streets Sub Area.

ZONING COMMISSION
District of Columbia
CASE NO.22-28A
EXHIBIT NO.2

B. Zoning Commission Approval

Pursuant to Z.C. Order No. 22-28 (the “Order”), dated November 17, 2022, and effective as of February 17, 2023 (Exhibit C), the Zoning Commission approved an application for Design Review, filed pursuant to Subtitle I § 616.8 and Subtitle I, Chapter 7 of the District of Columbia Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”)) to develop the Property with a new residential building containing approximately 263 dwelling units, ground floor and rooftop amenity space, and approximately 162 vehicle parking spaces (the “Project”).

C. Current Deadline to File Building Permit Application and Start Construction

Pursuant to Subtitle Z §§ 702.2 and 702.3 of the Zoning Regulations, and Decision No. E.9 of the Order, approval of the Project is valid for a period of two years from the effective date of the Order, within which time an application for a building permit must be filed. Construction must begin within three years after the effective date of the Order. Accordingly, a building permit application must be filed no later than February 17, 2025, and construction must begin no later than February 17, 2026. **However, due to extremely poor market conditions as further described below, the Applicant respectfully requests that the Zoning Commission approve a two-year extension of the Order, such that a building permit application must be filed no later than February 17, 2027, and construction must begin no later than February 17, 2028.**

II. JURISDICTION OF THE ZONING COMMISSION

Pursuant to 11-Z DCMR § 705.2, the Zoning Commission is authorized to extend the time period for an approved design review application for good cause, provided the following conditions are met:

- a. The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
- b. 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
- c. 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 design review application should be extended is whether there exists “good cause shown.” The Zoning Regulations define “good cause shown” in Subtitle Z § 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.

III. COMPLIANCE WITH STANDARDS FOR EXTENDING THE VALIDITY OF Z.C. ORDER NO. 22-28

A. Extension Request Served on All Parties

The parties to the original application were the Applicant and ANC 6D, the ANC in which the Property was located at the time of the approval. On January 1, 2023, the boundaries of the ANCs were modified, such that the Property is now located within the boundaries of ANC 8F.

As indicated in the Certificate of Service included at the end of this letter, the Applicant served this application on both ANC 6D and ANC 8F, thus providing the required time period in which 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. 22-28. The Applicant remains fully committed to moving forward with the Project as approved and fully complying with all conditions and obligations imposed as part of the design review approval.

C. Good Cause Shown

Pursuant to Subtitle Z § 705.2(c)(1), the Zoning Commission is authorized to grant an extension to the validity of projects if it demonstrates with substantial evidence 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."

As set forth in the affidavit of Richard Ruben, the managing member of RCM Socap, LLC, which is the managing member of the Applicant (the "Affidavit") (Exhibit D), this application satisfies the criteria of Subtitle Z § 705.2(c)(1) and thus meets the requirements for extending the deadline to file a building permit application for the Project.

Following issuance of the Order in November, 2022, impacts to the real estate market associated with the Covid-19 pandemic were ongoing and in many ways worsening. The market overall was plagued with high construction costs, insufficient labor, and supply chain issues. Inflation was high throughout the country, which led to tightened credit, increased borrowing costs, heightened market uncertainty, and a weak lending market. These conditions collectively

created an inhospitable market for multi-family residential development in the District, and this pattern has continued as follows:

- a. Challenges to the construction industry generally. Construction costs have increased significantly in terms of raw materials, building systems, and labor rates. In Washington, D.C., construction costs rose by approximately 5.3% between January, 2023 and January, 2024 alone, which makes it extremely difficult to predict final development budgets. *See* First Quarter 2024 North America Quarterly Construction Cost Report, issued by Rider Levett Bucknall (Exhibit A to the Affidavit). In addition, the ordering, fabricating, and delivering of equipment, supplies, and construction materials is routinely being disrupted or delayed, which impacts hard construction cost schedules and budgets. As such, the Applicant cannot embark on construction until a more stable supply chain is reestablished.
- b. Higher interest rates and tighter lending conditions. Recent efforts of the Federal Reserve to reduce inflation through aggressive rate hikes have led to heightened market uncertainty, increased borrowing costs, and tightened credit, collectively putting downward pressure on lending activity. The Lending Momentum Index issued by Coldwell Banker Richard Ellis (“CBRE”) demonstrates that overall lending momentum in Q1 2024 was down 32.7% from a year earlier, as high interest rates lowered lending activity. *See* CBRE Figures | U.S. Lending | Q1 2024 (Exhibit B to the Affidavit). At the same time, multi-family capitalization rates remained at approximately 5.4% in Q1 2024, as inflation rates continued to be persistently high. *See* Avison Young U.S. Multifamily Market Report | Q1 2024 (Exhibit C to the Affidavit).

Furthermore, the benchmark secured overnight financing rate (“SOFR”), which is a measure of the cost of borrowing for construction loans, increased from approximately 2% to 5.25%, which doubled the projected debt service during the development period approved for the Project. Such increases in short-term interest rates, as well as market increases in long-term lease interest rates, have also caused the increase in capitalization rates described above, thus enlarging the equity requirement for the Project and decreasing the Project’s anticipated value at completion. *See, e.g.*, “US overnight funding rate hits highest since January,” Reuters, July 2, 2024, stating that the unusually high SOFR is a sign of “dwindling liquidity.”

The result of the foregoing is that during the “biggest apartment construction boom in decades, a growing number of developers can’t make the numbers work to get started on their project, or can’t get the money to complete them.” *See* “Developers Sit on Empty Lots After Historic Apartment Boom,” The Wall Street Journal, June 4, 2024 (Exhibit D to the Affidavit). Across the country, multi-family building starts fell to an annual rate of 322,000 units in April, 2024, which was the lowest April rate since 2020. *Id.* This comes as many banks sour on the commercial real estate loans already on their books as their current portfolios are getting marked down and they don’t have much to lend. *Id.* As a consequence, developers need to raise more cash from investors to build, but many investors are more cautious today as rent growth flattens and new projects look less profitable at today’s higher interest rates and construction costs. The result is that fewer and fewer multifamily buildings, even once entitled, are able to start construction.

The statistics above are pervasive in the District as well. In 2023, “groundbreakings on new projects were delayed due to higher borrowing/construction costs and stricter lending standards, with new starts virtually coming to a halt in the year’s second half.” As set forth in the DC Economic Partnership Redevelopment Report (“WDCEP”) 2023/24 Edition (Exhibit E to the Affidavit), the District expects “new housing starts to remain limited through at least the first half of 2024 as higher borrowing and construction costs continue to make most projects unfeasible. Once market conditions become more favorable for development, the backlog of approved projects may result in a surge of new construction activity, but this is not expected until 2025 at the earliest.”

- c. The overall decline in apartment rents, increase in vacancy rates, and the District’s flatlining population. Over the past year, numerous new and competing apartment buildings opened in the surrounding neighborhoods, with apartment rents plateauing as a result of competitive concessions to attract tenants. *See* WDCEP Report (Exhibit E to the Affidavit). Nationwide, multifamily absorption reached its highest level in Q1 2024 since 2021, whereas rent growth has been minimal following the flood of new deliveries. *See* Avison Young Report (Exhibit C to the Affidavit). This has resulted in a noteworthy lack of demand for additional new multi-family housing at the targeted dates of Project completion and makes it particularly difficult to be competitive in the marketplace.
- d. Due to the extremely poor multi-family market conditions that have plagued not only the District of Columbia but the nation overall, we have been unable to obtain financing for the Project and move forward with filing a building permit application by the required deadline. Thus, we have determined that in order to ensure an economically feasible and successful project, the most practical course of action is to temporarily pause advancement of design and construction documents for the Project.

Despite the foregoing, to address the headwinds and continue to make progress on the approved Project, the Applicant has continued to move the Project forward. For example, the Applicant has worked to value engineer certain aspects of the building design by evaluating structural, façade, and mechanical systems and interior finish selections, which can collectively reduce cost while maintaining the design and commitments made as part of the Zoning Commission approval. In doing so, the Applicant has worked closely with its general contractor and potential subcontractors to price various options and negotiate lower costs. Finally, the Applicant has reviewed alternative financing options, including outreach to alternative capital partners with lower and/or more flexible costs. The Applicant is doing everything it can to move the Project forward given the harsh economic conditions.

Despite the obstacles described above and reiterated in the Affidavit, which are entirely outside of the Applicant’s reasonable control, the Applicant is still fully committed to moving forward with development of the Project as soon as market conditions allow. Indeed, the Applicant has worked diligently to advance the Project having met the following milestones:

- a. Completed schematic design and partial design development drawings in mid-2023;

- b. Entered into an Access and Protection Agreement with the adjacent St. Vincent de Paul Church in October, 2023;
- c. Submitted an application to the Office of the Surveyor for the District of Columbia in May, 2023, for the creation of a single record lot as is required for development of the Project; and
- d. Continued to advance the required site permits with DDOT and DOB, including obtaining a sheet and shoring permit (SH2300013) in June, 2024.

Based on the foregoing information, it is clear that the Applicant is fully prepared to proceed with development of the approved Project once capital markets and construction costs improve. The Applicant has already invested substantial resources in the Project, including legal, architectural, engineering, permitting, construction, and other consulting fees, such that there is no financial advantage for the Applicant to not move forward with development, and it has every incentive to do so as soon as feasible.

IV. NO HEARING NECESSARY

Pursuant to Subtitle Z § 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 Subtitle Z § 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 Subtitle § 705.2. All parties to underlying application were served copies of this application. There is no dispute that the Applicant has worked diligently to move forward with development of the Project. 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.

V. COMMUNITY ENGAGEMENT

The Property is located within the boundaries of ANC 8F, and specifically ANC 8F04. On July 23, 2024, the Applicant presented the application at ANC 8F's regularly scheduled and duly noticed public meeting, at which a quorum of commissioners was present. At that meeting, ANC 8F voted unanimously (5-0-0) to support the extension application.

The Property is also located across South Capitol Street from ANC 6D, which is therefore also an "affected ANC" pursuant to Subtitle B § 100.2. As indicated in the Certificate of Service included at the end of this letter, the Applicant served a copy of this application on both ANC 6D and ANC 8F, thus providing the required notice to the affected ANCs.

VI. 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 the deadline to file a building permit application and begin construction of the Project, such that a building permit application must be filed no later than February 17, 2027, and construction must begin no later than February 17, 2028. No hearing is necessary as there are no material factual issues in question. Thus, the Applicant respectfully requests that this application be considered by the Zoning Commission at its September 26, 2024, public meeting.

Sincerely,

HOLLAND & KNIGHT LLP

By: Christine Shiker
Christy M. Shiker

By: Jessica Bloomfield
Jessica R. Bloomfield

Attachments

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2024, 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

District Department of Transportation

Erkin Ozberk
erkin.ozberk1@dc.gov

Advisory Neighborhood Commission 8F

8F@anc.dc.gov

Commissioner Edward Daniels, ANC 8F04 and ANC Chair
8F04@anc.dc.gov

Advisory Neighborhood Commission 6D *(ANC located across South Capitol Street)*

6D@anc.dc.gov

Commissioner Rikki Kramer, ANC 6D Chair
6D07@anc.dc.gov



Jessica R. Bloomfield
Holland & Knight, LLP