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## ***Submitted via Interactive Zoning Information System (IZIS)***

February 14, 2025

District of Columbia Zoning Commission  
441 4<sup>th</sup> 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  
Z.C. Order No. 18-03, 18-03(1) and 18-03A  
4611-4615 41<sup>st</sup> Street, NW (Square 1769, Lot 32)**

Dear Zoning Commissioners:

On behalf of Dancing Crab Properties, LLC and 10009 Fields Road, Inc. (together, the “Applicant”), this letter serves as a request for a two-year extension to begin construction of the approved development at 4611–4615 41<sup>st</sup> Street, NW (Square 1769, Lot 32)<sup>1</sup> (the “Property”).

The development of the Property was approved pursuant to Z.C. Order No. 18-03 (Exhibit A). That order approved a consolidated Planned Unit Development (“PUD”) and a related Zoning Map Amendment from the MU-4 zone to the MU-5B zone to redevelop the Property with a new mixed-use residential building consisting of (i) approximately 41 residential units, and (ii) a restaurant/bar use to be located on the ground floor and within the penthouse habitable space (collectively, the “Project”). Zoning Commission Order No. 18-03 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 of the Project 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 Z.C. Order No. 18-03, such that a building permit application was required to be filed no later than March 1, 2022, and construction of the Project was required to commence no later than March 1, 2023. The Applicant filed a building permit application within the required time limits set forth in Z.C. Order No. 18-03(1).

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<sup>1</sup> When Z.C. Order No. 18-03 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 plat consolidated Lots 1 and 2 into a single record lot that is now known as Lot 32 in Square 1769.

Pursuant to Z.C. Order No. 18-03A (Exhibit C), the Zoning Commission (the “Commission”) approved the Applicant’s application for a two-year time extension of the March 1, 2023 deadline to start construction, such that construction of the Project was required to commence no later than March 1, 2025.

Now, the Applicant respectfully requests a two-year extension of the deadline to begin construction of the Project. If approved, construction of the Project would be required to begin no later than March 1, 2027. This 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 D, and a signed Application Signature Form 100 is attached at Exhibit E.

## **I. JURISDICTION OF THE ZONING COMMISSION**

Pursuant to 11-Z DCMR § 705.2, the Zoning Commission may extend the 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 consideration for determining if a PUD should be extended is whether “good cause shown” exists. 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.

11-Z DCMR §§ 705.2(c)(1)–705.2(c)(3).

## **II. COMPLIANCE WITH STANDARDS FOR EXTENDING PUD VALIDITY**

### **A. The Extension Request Has Been Served on All Parties**

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

### **B. There is No Substantial Change in Material Facts**

There have been no substantial changes in any of the material facts upon which the Commission based its approval of Z.C. Order No. 18-03. As described below, the Applicant applied for a building permit within the required timeframes, however, the Applicant has been unable to secure all required governmental agency approvals because of delays that are beyond the applicant’s reasonable control. Despite its inability to obtain all required governmental agency approvals, the Applicant remains fully committed to moving forward with the construction of the Project and remains fully committed to complying with all conditions and obligations imposed as part of the PUD approval.

### **C. There is Substantial Evidence of “Good Cause Shown”**

Pursuant to 11-Z DCMR § 705.2(c)(2), the Zoning Commission is authorized to extend the validity period of an approved PUD if 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 F), 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 Project. The Applicant has taken many steps to move the construction of 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). As shown on the photographs of the Property, attached as Exhibit A to the Affidavit, the buildings on the Property have been fully demolished pursuant to these permits.
- On January 20, 2022, the Applicant timely filed a building permit application with the Department of Buildings (“DOB”) (Permit No. B2203165), which was accepted as complete on January 30, 2022, and referred to the reviewing disciplines on February 1, 2022. Permit No. B2203165 was ultimately approved on June 5, 2023, after multiple rounds of comments and responses with various reviewing agencies.

- The Applicant also submitted a variety of other permits, including (i) an application for bay window projections on January 19, 2022, which was approved and issued on February 15, 2023, and (ii) an application for a public space permit on January 19, 2022, which was approved on February 16, 2023.
- The Applicant also prepared the PUD Covenant required by Z.C. Order No. 18-03, Conclusion of Law No. F.1, which was recorded in the Land Records of the District of Columbia on February 17, 2022, as Instrument No. 2022018979. Significantly, pursuant to 11-Z DCMR § 702.10, the Property must be constructed in accordance with the approved PUD.
- The Applicant also submitted a draft Inclusionary Zoning Covenant and Certificate of Inclusionary Zoning Compliance, which was approved by the Department of Housing and Community Development (“DHCD”) on October 6, 2022.
- On May 5, 2022, the Applicant submitted an Environmental Impact Screening Form (“EISF”) Application and associated documentation and correspondence to the Department of Energy and Environment (“DOEE”). 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.”
- In anticipation of receiving a building permit, on January 5, 2023, the Applicant posted notice signs on the Property indicating the filing of a building permit, the signs were 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.*
- In addition, 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).
- Further, as of February 4, 2025, Permit No. SH2300009’s Scout tracking page indicates that (i) structural review and approval is still pending, (ii) District Department of Transportation (“DDOT”) review and approval is still pending, and (iii) Washington Metropolitan Area Transit Authority (“WMATA”) review and approval is still pending. *See Exhibit B of the Affidavit.* Additionally, in order to continue processing Permit No. SH2300009, the Applicant was recently made aware that it would have to post a new bond.
- Given the Property’s close proximity to a WMATA Metrorail, the Project is required to obtain a “No Further Action” letter from WMATA authorizing construction to proceed. To date, WMATA has not issued its “No Further Action” letter.

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 developing the Project as quickly as possible and in accordance with the PUD approval. Although the Applicant has been unable to start construction, the Applicant has been working diligently to obtain all permits necessary to commence construction. The Applicant is very much committed to moving forward with

construction of the Project, and will do so as soon as they receive all necessary building permits and approvals. Indeed, 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 Project, and we have every incentive to do so as soon as feasible.

### **III. WAIVER PURSUANT TO 11-Z DCMR § 101.9**

As this is the Applicant's second request for an extension, the Applicant requests a waiver from the timeframes set forth in 11-Z DCMR § 705.5, which states:

*An applicant with an approved PUD may request no more than two (2) extensions. The second request for an extension may be approved for no more than one (1) year.*

Pursuant to 11-Z DCMR § 101.9, the Commission may, for good cause shown, waive any provision of Subtitle Z if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

As stated above, the Applicant has experienced significant delays which have been beyond the Applicant's reasonable control. These delays, while hopefully soon resolved, have significantly plagued the construction of the Project. As a result, the Applicant needs a waiver from the one-year limitation for the second extension request in Subtitle Z § 705.5. Granting the waiver will not prejudice the rights of the ANC because the Applicant remains fully committed to moving forward with the construction of the Project.

### **IV. 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. If a public hearing is held, that hearing shall be limited to the specific and relevant evidentiary issues in dispute.

A public hearing is not necessary because there are no material factual issues in question concerning any the criteria set forth in 11-Z DCMR § 705.2. The only other party to this case is ANC 3E, to whom the Applicant has served a copy of this request. Further, there should be no dispute that the Applicant has been unable to secure all required government agency approvals because of delays beyond the Applicant's reasonable control.

Indeed, the Applicant believes that it will be able to obtain all required government agency approvals soon and will subsequently start construction of the Project in the near-term. As such, there are no material factual conflicts concerning the criteria the Zoning Commission is required to evaluate.

## V. CONCLUSION

In light of this demonstration of good cause and for the reasons stated herein, the Applicant respectfully requests that the Commission approve a two-year extension to start construction of the Project, such that construction must begin no later than March 1, 2027. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: s/ *Kyrus L. Freeman*  
Kyrus L. Freeman  
John T. Oliver

Attachments

cc: Certificate of Service

## **CERTIFICATE OF SERVICE**

I hereby certify that on February 14, 2025, 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*

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### **District Department of Transportation**

Erkin Ozberk  
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### **Advisory Neighborhood Commission 3E**

Commissioner Jonathan Bender  
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