

District of Columbia Zoning Commission
Z.C. Order Nos. 18-03 et seq.

Affidavit in Support of a Two-Year Extension of Time

I, Tom McDowell, being duly sworn, depose and state as follows:

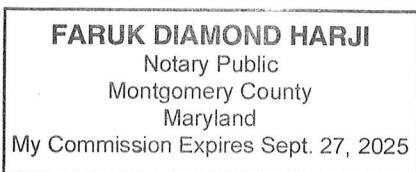
1. I am Tom McDowell, the representative of Dancing Crab Properties, LLC and 10009 Fields Road, Inc., which are together the owner of the property located at 4611–4615 41st Street, NW (Square 1769, Lot 32) (the “Property”).
2. The development of the Property was approved pursuant to Z.C. Order No. 18-03. 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”).
3. 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.
4. Pursuant to Z.C. Order No. 18-03(1), 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).
5. Pursuant to Z.C. Order No. 18-03A, 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.
6. However, despite our good faith efforts to start construction of the Project, we have been unable to do so due to our inability to secure all required governmental agency approvals to commence construction due to delays in the approval process that are beyond our reasonable control. Indeed, we have taken many steps to move 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, applying for and responding to comments through the building permit review process, and filing and processing a variety of other construction prerequisites.

7. For example, we applied for and received raze permits to demolish the existing structures on the Property on September 20, 2021 (Permit Nos. R2000073 and R2000077), which have since been demolished. *See Exhibit A.*
8. On January 20, 2022, we 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.
9. We 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.
10. We prepared the PUD Covenant required by Z.C. Order No. 18-03, Conclusion of Law No. F.1, which we 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.
11. We 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.
12. On May 5, 2022, we 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.”
13. In anticipation of receiving our building permit, on January 5, 2023, we posted notice signs on the Property indicating the filing of a building permit, which 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.*
14. In addition, we submitted an application for an Excavation Sheeting and Shoring permit on January 17, 2023, which is currently under review by DOB (Permit No. SH2300009).
15. Further, as of February 4, 2025, Permit No. SH2300009’s Scout tracking page, attached as Exhibit B, 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. Additionally, in order to continue processing Permit No. SH2300009, we were recently made aware that we would have to post a new bond.

16. 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, it is clear that we have taken many steps to move forward with developing the Project as quickly as possible and in accordance with the PUD approval. Although we have been unable to start construction, we have been working diligently to obtain all permits necessary to commence construction. We are still very much committed to moving forward with construction of the Project, and will do so as soon as we receive all necessary building permits and approvals. Indeed, we have 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 us not to move forward with construction of the building, and we have every incentive to do so as soon as feasible.

I solemnly affirm under the penalty of perjury that the contents of this Affidavit are true and correct to the best of my personal knowledge.



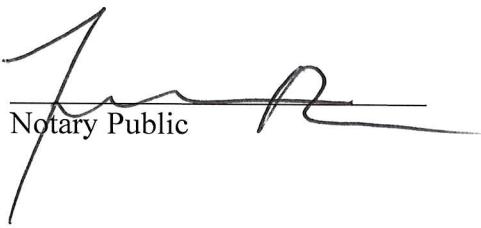
Dancing Crab Properties, LLC
10009 Fields Road, Inc.

By:



Tom McDowell
Tom McDowell, representative

Sworn and subscribed to me this 13 day of February, 2025.



Notary Public