

# Holland & Knight

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February 18, 2025

Zoning Commission  
for the District of Columbia  
441 4th Street, NW, Suite 210S  
Washington, DC 20001

**Re: Request for a Waiver of Two-Year Limit for Time Extension  
Request for a One-Year Extension to Commence Construction of PUD  
2715 Pennsylvania Avenue, NW (Square 1194, Lot 15)  
ZC Order Nos. 15-18 through 15-18C**

Dear Members of the Commission:

On behalf of Initio LP (the “Applicant”), an entity affiliated with EastBanc Inc., we hereby submit this application requesting a one-year extension of the deadline to commence construction on the approved Planned Unit Development (“PUD”), established in ZC Order 15-18C, from March 9, 2025, to March 9, 2026. Because the Zoning Commission previously granted a two-year extension of time to commence construction for the PUD, the Applicant respectfully requests that the Zoning Commission waive the two-year limit on extensions under Sub. X, Sec. 705.3, in order to grant this one-year extension request.

This application is filed with the Zoning Commission pursuant to Subtitle Z § 705 of Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016 (the “Zoning Regulations”). The required Application Form 106 is submitted concurrently via IZIS. A check in the amount of \$1,500.00 made payable to the D.C. Treasurer for the requisite filing fee pursuant Subtitle Z § 1600.10(c) will also be provided to the Office of Zoning upon filing.

## **A. Background**

### **1. The Property**

The subject property is an irregularly shaped lot located at 2715 Pennsylvania Avenue, NW, which is more particularly known as Lot 15 in Square 1194 (the “Property”). The Property consists of 7,211 square feet of land area and is situated at the eastern boundary of Georgetown, nestled against Rock Creek Parkway on the east, and fronts on Pennsylvania Avenue, M Street, and 28<sup>th</sup> Street. The area surrounding the Property, generally, consists of a variety of residential and non-residential uses. The Four Seasons Hotel is located to the south, on the opposite side of Pennsylvania Avenue. To the west is a “pocket park” on Federal Reservation 691 (Lot 807) and the intersection of Pennsylvania Avenue and M Street. To the north, on the opposite side of M Street, is a four-story building that includes commercial, office, and residential uses.

## 2. Zoning Commission Approvals

a. The PUD was originally approved under **ZC Order No. 15-18** (Ex. A) (the “Order”), which also included a related Zoning Map amendment from the C-2-A Zone District/unzoned to the W-2 Zone District for the Property. The approved PUD consists of a mixed-use building with a restaurant on the ground floor and a four-story apartment house with seven residential units above. The building was approved with a height of 60 feet; approximately 26,034 square feet of floor area, resulting in a density of 3.5 FAR; and a lot occupancy of 74.8%. Further, the Applicant was granted flexibility to have zero off-street parking spaces, although there will be a through driveway for deliveries, trash collection, and resident guest drop off. The Applicant was also granted flexibility to provide a rear yard of varying widths, including a minimum of 0'.

On April 3, 2017, the Committee of 100 appealed the Order to the D.C. Court of Appeals (“DCCA”). Subtitle Z § 705.8 provides that “[i]n the event an appeals is filed...the time limitations of Subtitle Z §§ 702.2 and 702.3 shall run from the decision date of the court’s final determination of the appeal.” DCCA granted a motion to dismiss the appeal on March 9, 2018. Therefore, pursuant to Subtitle Z § 705.8, the Order was valid from said date; that is, a building permit for construction was to be filed no later than March 9, 2020, and construction was to commence no later than March 9, 2021. A building permit was timely filed, and approvals were received by summer of 2022.

b. Pursuant to **ZC Order No. 15-18A** (Ex. B), the Commission granted a Minor Modification to the Order relating to the minimum area requirements for the PUD in Subtitle X § 301.1.

c. Pursuant to **ZC Order Nos. 15-18(1) and 15-18(2)** (Ex. C) the approved PUD was granted two one-year COVID-19 time extensions in accordance with Subtitle Z § 705.9. Consequently, the effective date of the Order was extended to March 9 2022, and the date to start construction/validity deadline was extended until March 9, 2023.

d. Pursuant to **ZC Order No. 15-18B** (Ex. D), the Commission approved a Modification of Consequence that: (i) reduced the size of the Property to 7,211 square feet; (ii) granted flexibility to provide a lot occupancy of 76.9%, where a maximum of 75% is permitted in the W-2 Zone District; (iii) permitted an increased height of the elevator overrun; and (iv) modified the brick color on the building from red to a mid-tone gray.

e. Pursuant to **ZC Order No. 15-18C** (Ex. E), the Zoning Commission extended the deadline to commence construction of the PUD to March 9, 2025.

## B. Request for Time Extension

The Applicant originally completed drawings for a Foundation to Grade Permit in enough time to meet the March 9, 2025 deadline. However, the Applicant could not file the plans with the Department of Buildings (“DOB”) because it was unable to secure financing for the project until September of 2024. When the time came to file their plans, the Applicant learned that the District

Department of Energy and Environment (“DOEE”) removed the site, which was formerly a gas station, from its Voluntary Remediation Action Program (“VRAP”). The VRAP application package had to be redone in order to comply with the current DOEE requirements. The revisions to the VRAP application package triggered the redesign of drawings for the Support of Excavation Permit and the Foundation to Grade Permit. Also, last year, without notice to the development industry, Washington Gas changed its meter location requirements, which necessitated a redesign of the drawings for the utility connection.

Given the foregoing, the Applicant needs additional time to finish the permitting process. Pursuant to Subtitle Z § 705, the Applicant respectfully requests a one-year extension of time to commence construction, from March 9, 2025, to March 9, 2026. Because the Zoning Commission granted a two-year time extension under ZC Order No. 15-18C, the Applicant respectfully requests that the Commission waive the two-year extension limit in order to permit the additional one-year extension requested herein.

### **C. Criteria for Granting Time Extension Under Subtitle Z § 705**

Under Subtitle Z § 705.2, “[a]n applicant may request an extension of the time periods of an order for good cause upon the filing of a written request, before the expiration of the approval,” upon documenting certain conditions. The Commission may, at its sole discretion, grant an extension request for no more than two (2) years, subject to their determination that the Applicant “has sufficiently evidenced compliance” with the criteria of Subtitle Z §§ 705.2(a)–(c). As discussed below, this application satisfies all of the applicable criteria.

- ***Subtitle Z § 705.2(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;***

Other than the Applicant, the only other party to the original proceeding was Advisory Neighborhood Commission (“ANC”) 2E. As indicated in the Certificate of Service attached hereto, the Applicant served this application on ANC 2E at the time of filing. The Applicant acknowledges that the ANC must be allowed thirty (30) days to respond before the Commission may consider this application.

- ***Subtitle Z § 705.2(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***

Although the PUD was approved under ZR58, this extension request is being reviewed under ZR16, the criteria under which an extension request is reviewed are the same under both sets of regulations.

Furthermore, the Commission’s analysis of potential impacts remains unchanged, as there has been no new development near the site. Based on the foregoing, there has been no substantial change in any of the material facts upon which the Commission based its original approval.

- **Subtitle Z § 705.2(c):** *The applicant demonstrates with substantial evidence one (1) or more of the following criteria:*
  - (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.*

In this case, although the Applicant completed its permit drawings in enough time to commence construction by March 9, 2025, as set forth in ZC Order No. 15-20C, the Applicant was forced to delay submitting the permit drawings to DOB because it was unable to secure financing for the project. The two factors that made financing challenging were (a) the large increase in construction costs over the past few years due to inflationary pressure on construction wages and materials; and (b) higher interest rates for higher-risk development projects. With regard to the latter, the District of Columbia's development industry still continues to suffer in a post-COVID environment because of the District's reliance on the federal government and a large commuter workforce population, two sectors that never fully returned to the city after COVID. As a result, Washington, DC has increasingly become seen as an unfavorable city for investment when compared to higher growth markets.

A former gas station site, the Property was accepted into the DOEE VRAP program in 2017. At that time, DOEE's acceptance of an application did not expire. However, in 2020, DOEE revised the program such that if an Applicant fails to begin or implement corrective action within two years of being granted VRP status, DOEE may remove the VRP from the VRAP program. In December of 2024, while coordinating construction of the PUD with DOEE, the Applicant learned that the Property was removed from the VRAP program. Until then, the Applicant was unaware that DOEE's new requirements were retroactively applied to the Property. The revisions to the VRAP application package triggered the redesign of drawings for the Support of Excavation Permit and the Foundation to Grade Permit.

Finally, last year, without notice to the development industry, Washington Gas changed its meter location requirements which necessitated a redesign of the drawings for the utility connection.

An affidavit prepared by the Applicant's representative, Anthony Lanier, in support of the information provided above is attached as Exhibit F.

**D. Conclusion**

In light of the foregoing, the Applicant needs additional time to commence construction of the PUD. The Applicant requests that the Zoning Commission waive the two-year extension limit in Subtitle Z § 705, and extend the deadline to commence construction for the PUD originally approved in ZC Order 15-18 for one year, from March 9, 2025, to March 9, 2026.

Respectfully submitted,

Holland & Knight LLP

By:

Leila M. Jackson Batties  
Leila M. Jackson Batties

Attachments

cc: Certificate of Service

## **CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2025, a copy of the foregoing request for a Time Extension of the validity period originally established in Z.C. Order No. 15-18, as extended by Z.C. Order 15-18C, was served on the following by electronic mail at the addresses stated below:

### **DC Office of Planning**

Jennifer Steingasser  
jennifer.steingasser@dc.gov  
Joel Lawson  
joel.lawson@dc.gov

### **Advisory Neighborhood Commission 2E**

c/o Chairperson Gwendolyn Lohse  
2E@anc.dc.gov  
2E06@anc.dc.gov

### **Commissioner Gwendolyn Lohse**

Single-Member District Representative, ANC 2E06  
2E06@anc.dc.gov

/s/ Leila M. Jackson Batties

Leila M. Jackson Batties  
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