

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

John T. Oliver
202.469.5531
john.oliver@hklaw.com

Submitted via Interactive Zoning Information System (IZIS)

March 17, 2025

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

**Re: Request for Two-Year Extension of Planned Unit Development
Z.C. Order No. 22-11
807 Maine Avenue, SW (Square 439S, Lot 15)**

Dear Zoning Commissioners:

On behalf of the Disabled American Veterans (the “Applicant”), this letter serves as a request for a two-year extension of the time period by which to file a building permit application and to begin construction of the residential building that will be located at 807 Maine Avenue, SW (Square 439S, Lot 15) (collectively, the “Property”).

The development of the Property was approved pursuant to Z.C. Order No. 22-11 (Exhibit A). That order approved a consolidated Planned Unit Development (“PUD”) and a related Zoning Map Amendment from the MU-12 zone to the MU-10 zone to redevelop the Property with a new residential building consisting of (i) 194,839 square feet of gross floor area (“GFA”), (ii) approximately 195 total residential units, and (iii) approximately 27 Inclusionary Zoning (“IZ”) units, of which three will be reserved for households earning no more than 50% median family income (“MFI”) and 24 will be reserved for households earning no more than 60% MFI (collectively, the “Project”).

Zoning Commission Order No. 22-11 was approved on January 26, 2023, with an effective date of July 28, 2023. Pursuant to Z.C. Order No. 22-11, Decision No. G.2, the order is valid for a period of two years, such that a building permit application must be filed no later than July 28, 2025, and construction of the Project is required to commence no later than July 28, 2026.

For the reasons stated herein, the Applicant respectfully requests a two-year time extension of the time period by which to file a building permit application and to begin construction of the Project. If approved, a building permit application for the Project must be filed no later than July 28, 2027, and construction of the Project must commence no later than July 28, 2028.

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 B, and a signed Application Signature Form 100 is attached at Exhibit C.

I. JURISDICTION OF THE ZONING COMMISSION

Pursuant to 11-Z DCMR § 705.2, the Zoning Commission (“Z.C.” or “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 is Advisory Neighborhood Commission (“ANC”) 6D. As indicated in the Certificate of Service, attached hereto, the Applicant

has served this application upon ANC 6D, therefore providing ANC 6D 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. 22-11. As described below, the Applicant has been unable to apply for a building permit application and has been unable to commence construction of the Property within the required timeframes because the Applicant lost its original development partner and has been unable to obtain project financing due to economic and market conditions beyond the Applicant's reasonable control. Despite its inability to locate a new development partner and to subsequently obtain project financing, 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)(1), the Commission is authorized to extend the validity period of an approved PUD if the applicant demonstrates with substantial evidence “[a]n 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.”

The Applicant filed the original application on March 7, 2022, with the intent to commence construction of the Project as soon as possible. However, the original application was not approved until January 26, 2023, by which point interest rates increased from 0.5% to 4.50%. *See* Federal Funds Effective Rate, available at: <https://fred.stlouisfed.org/series/FEDFUNDS> Interest rates continued to rise in 2023 and ended the year at more than 5%—the highest level since the 2007–2008 financial crisis. *See* “The Fed Reduced the Short-Term Rate Again, but Interest Costs Remain High” *Peter G. Peterson Foundation*, Dec. 18, 2024. Due to the rapid rise of interest rates and general market instability, the Applicant's original development partner exited the development deal on May 31, 2023.

Interest rates did not begin to decline until September 18, 2024, at which point they steadily decreased to approximately 4.50% in Q4 2024. *Id.* Further, the Federal Reserve has signaled that it will reduce interest rates no more than twice in 2025; which is less than their previous projection of four reductions. *See* “Fed Signals Plan to Slow Rate Cuts, Sending Stocks Lower” *The Wall Street Journal*, Dec. 18, 2024.

As a consequence of these elevated interest rates, multifamily construction has come to a halt within the District. In fact, according to Delta Associates' Q3 and Q4 2023 Mid-Atlantic Class A Apartment Market Report, there was just one project, totaling 112 units, that started construction in the District during the third quarter of 2023, and no new projects started construction in the fourth quarter of 2023. In total, 2,341 units started construction in the District during 2023, which is down 66% from 2022 when 6,881 units started construction. *See* “D.C. Area Sees Slowest Quarter of New Apartment Construction Since 2010” *Bisnow*, Nov. 6, 2023. This trend remained consistent throughout 2024 as the commercial real estate industry continued to experience high

construction costs, insufficient labor, supply chain issues, and difficult capital markets. *See* “D.C. Sees Spike in Project Delays Amid ‘Dark Cloud’ Hanging Over Development” *Bisnow*, Jan. 9, 2024.

Subsequently, the Applicant has been unable to locate a new development partner and has been unable to obtain sufficient project financing due to economic and market conditions beyond the Applicant’s reasonable control. *See* Affidavit of Carl Philip Ranno, Jr., Managing Principal of Clear Real Estate Services (“Clear RES”) (the “Affidavit”) (Exhibit D). As detailed in the Affidavit, the Applicant, through Clear RES, has actively marketed the Property in an attempt to locate a potential purchaser or a new development partner. In fact, on February 25, 2025, they partnered with CBRE to further the efforts locate a purchaser or a development partner for the Project. Further, the Applicant has proceeded diligently and in good faith on the development and the entitlements for the Project so that a building permit can be filed and construction can commence as soon as financing is secured.

The Applicant remains fully committed to moving forward with the development of the Project despite the market challenges detailed above and the Applicant’s inability to obtain sufficient project financing. As such, the Applicant requests a two-year time extension of the time period by which to file a building permit application and to begin construction of the Project

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. 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 application is ANC 6D, to whom the Applicant has served a copy of this application. Further, as outlined above, there should be no dispute that the Applicant has worked diligently to locate a new development partner and to obtain sufficient project financing.

Indeed, the Applicant believes that it will be able to locate a new development partner and obtain sufficient project financing for the development as market conditions hopefully improve in the near-term. As such, there are no material factual conflicts concerning the criteria the Commission is required to evaluate.

IV. 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 time extension of the time period by which to file a building permit application and to begin construction of the Project, such that a building permit application for the Project must be filed no later than **July 28, 2027**, and construction of the Project must commence no later than **July 28, 2028**.

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 March 17, 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

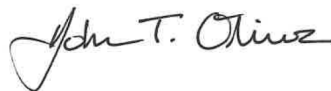
Jennifer Steingasser
jennifer.steingasser@dc.gov
Joel Lawson
joel.lawson@dc.gov

District Department of Transportation

Erkin Ozberk
erkin.ozberk1@dc.gov

Advisory Neighborhood Commission 6D

Commissioner Gottlieb Simon
ANC 6D Chair, ANC 6D02
6D@anc.dc.gov
6D02@anc.dc.gov
Commissioner Marquell Washington
SMD Representative, ANC 6D01
6D01@anc.dc.gov



John T. Oliver
Holland & Knight LLP