

# Holland & Knight

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September 27, 2021

## **VIA IZIS**

Board of Zoning Adjustment  
of the District of Columbia  
441 4<sup>th</sup> Street, NW, Suite 210S  
Washington, DC 20001

**Re: Request for a Two-Year Time Extension of BZA Order No. 19841A  
Habitat for Humanity of Washington, D.C., Inc.  
900-914 55<sup>th</sup> Street, NE (Square 5204, Lot 22)**

Dear Members of the Board:

This letter is submitted on behalf of Habitat for Humanity of Washington D.C., Inc., the owner of 900-914 55<sup>th</sup> Street, NE (Square 5204, Lot 22) (the “Site”) in support of its application for a two-year extension of BZA Order No. 19841A.

Included with this submission is the requisite filing fee of \$2,569 (26% of the original filing fee) and an authorization letter from the Applicant (Exhibit A).

### **I. Background on Prior BZA Approval**

Pursuant to BZA Order No. 19841 (Exhibit B), the Board of Zoning Adjustment (the “Board” or “BZA”) granted special exception relief under 11-C DCMR § 305.1 from the subdivision regulations of 11-C DCMR § 302.2, and an area variance from the side yard requirements of 11-D DCMR §§ 307.1 and 307.4, to construct 17 new semi-detached and detached single dwelling units on a single record lot in the R-2 zone at the Site. BZA Order No. 19841 had a final date of January 17, 2019, and became effective on January 27, 2019.

In BZA Order No. 19841A (Exhibit C), and pursuant to 11-Y DCMR § 705.7, the BZA granted an administrative COVID-19 one-year time extension to BZA Order No. 19841, which extended the order’s validity until January 27, 2022. With this letter, we request that the Board extend BZA Order No. 19841A for a period of two years, or until January 27, 2024.

Board of Zoning Adjustment  
District of Columbia  
CASE NO. 19841B  
EXHIBIT NO. 2

This extension is requested pursuant to 11-Y DCMR § 705, which allows the Board to extend the time periods set forth in Subtitle Y § 702.1 for good cause shown. As set forth below, there is good cause shown for this extension request.

## **II. Compliance with Subtitle Y § 705**

Pursuant to 11-Y DCMR § 705.2, the Board may extend the time periods of 11-Y DCMR § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; provided that the Board determines that the following requirements 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 Board based its original approval of the application that would undermine the Board's justification for approving the original application; and
- c. The applicant demonstrates that there is good cause for such extension, with substantial evidence of one (1) or more of the following criteria:
  1. An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;
  2. An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays 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.

For the reasons set forth below, this application meets the standards of 11-Y DCMR § 705.1 to extend the time period of BZA Order No. 19841A.

### **A. Service on All Parties to the Application**

The Applicant served a copy of this extension request on Advisory Neighborhood Commission ("ANC") 7C, the ANC in which the Site is located. ANC 7C was the only party to the original application.

### **B. No Substantial Change in Any Material Facts**

The Applicant's plans for the project are unchanged from the plans approved in BZA Order No. 19841. The plans are consistent with the relief approved in BZA Order No. 19841 and the Applicant is not requesting any new areas of relief.

### **C. Substantial Evidence of Good Cause for the Extension**

As detailed in the affidavit signed by Susanne Slater, the President & CEO of Habitat for Humanity of Washington D.C., Inc., (Exhibit D) (the “Affidavit”), the Applicant has been unable to submit final building permit application plans for the approved project, despite its good faith efforts to do so, due to (i) an inability to obtain sufficient project financing due to economic and market conditions beyond the Applicant’s reasonable control; and (ii) the existence of other conditions beyond the Applicant’s reasonable control, as set forth below:

1. Financing Delays. The COVID-19 pandemic has caused, and continues to cause, major disruptions and delays to the Applicant’s operations. Financing for the approved project is contingent on the sale of a separate 14-unit project in Southeast DC, which is also being developed by the Applicant. This is a result of the Applicant’s use of New Market Tax Credits for financing, which results in funding for new projects largely being fueled by prior project sales. Due to the pandemic, the sales and closing processes on the 14 units in Southeast, DC has been significantly prolonged.
2. Homebuyer Difficulties. The pandemic has also caused changes to many of the Applicant’s homebuyers’ work situations, which has affected their credit. Although this is temporary for most, it has delayed the process for some and has caused others to drop out of the homebuying process altogether. When a buyer drops out, the process starts over with all new screening, approvals, pre-settlement demonstrations, and necessary homeowner-tied inspections such as the Home Purchase Assistance Program at the Department of Housing and Community Development. Over the last year alone, ten potential Habitat buyers dropped out, which was highly resource-draining and time consuming for the Applicant’s already limited staff and directly affected the Applicant’s ability to move forward with development of the approved project.
3. Budgeting Delays Due to a Shortage of Contractors and Increased Costs of Labor and Materials: Throughout the COVID pandemic, the Applicant has had to repeatedly revise its budgets to account for increased costs. The Applicant has greatly exceeded what was considered reasonable contingency allotments, which has required it to reassess the anticipated project financing needs and plan accordingly. A shortage of contractor availability has also made it more difficult for the Applicant to obtain reasonable proposals and proposals in general.
4. Operating with Fewer Funding Sources and Fewer Staff: Due to the COVID-19 pandemic, the Applicant has lost alternative funding sources that would have otherwise been devoted to the approved project and has also had a major shortage of staff.
5. No Volunteers: Due to the pandemic, the Applicant also has not taken on AmeriCorps, crew leaders, or regular volunteers. This has been a major change in how the Applicant organization operates. Tasks that would have been done by volunteers now need to be contracted out or done by the Applicant’s very limited field staff. The Applicant is just now

starting discussions about starting to take some limited volunteers again and whether that can be done safely and/or effectively.

6. Continued Remote Work: Due to the rise of COVID-19 variants and safety concerns for employees' families and those considered immunocompromised, all but the field staff continue to work from home. This has caused delays and inefficiencies in completing existing projects and starting the approved project.

In order to move the project forward, the Applicant has already acquired preliminary construction drawings but does not yet have funds to move forward with completing construction drawings and submitting them for a building permit. Once the Applicant's funding streams are reestablished, it will be able to move forward with filing a building permit for the approved project.

Based on the foregoing, it is clear that the Applicant has experienced significant delay in being able to finalize construction drawings and file a building permit application for the project approved by BZA Order No. 19841. This has been a direct result of the Applicant's inability to obtain sufficient project financing and other conditions described above and largely created by the COVID-19 pandemic that are beyond the Applicant's reasonable control and which have collectively delayed the Applicant's ability to move forward with development of the project at this time.

Despite these delays, the Applicant is committed to moving forward with development of the approved project. To date, the Applicant has invested almost \$250,000 on legal, architectural, engineering, and other consulting fees, all on top of the costs to purchase, finance, and carry the land. There is no financial advantage for the Applicant to not redevelop the Site as approved, and the Applicant has every incentive to do so as soon as it is feasible. Accordingly, the requested extension will give the Applicant the time needed to complete all remaining predevelopment-related steps. The Applicant anticipates finalizing its financing and submitting a building permit application within the next 12 months.

### **III. Conclusion**

The Zoning Regulations provide in Subtitle Y § 705.2 that a time extension granted pursuant to Subtitle Y § 705.1 shall not exceed two years. The requested extension is for a period of two years, and thus complies with Subtitle Y § 705.2.

We believe that the facts recited above provide a sufficient basis under Subtitle Y § 705.1 *et seq.* for the Board to grant the requested extension, and we respectfully request that the Board do so.

Sincerely,

HOLLAND & KNIGHT, LLP



Norman M. Glasgow, Jr.  
Jessica R. Bloomfield

## Enclosures

cc: Certificate of Service  
Joel Lawson, D.C. Office of Planning (w/ enclosures, via Email)  
Matthew Jesick, D.C. Office of Planning (w/ enclosures, via Email)  
Jonathan Rogers, DDOT (w/ enclosures, via Email)  
Aaron Zimmerman, DDOT (w/ enclosures, via Email)

**CERTIFICATE OF SERVICE**

I hereby certify that on September 27, 2021, a copy of the foregoing application to the Board of Zoning Adjustment was served by electronic mail on the following at the addresses stated below.

Ms. Jennifer Steingasser  
D.C. Office of Planning  
[jennifer.steingasser@dc.gov](mailto:jennifer.steingasser@dc.gov)

Advisory Neighborhood Commission 7C  
[7C@anc.dc.gov](mailto:7C@anc.dc.gov)

Commissioner Victoria Clark  
ANC 7C06  
[7C06@anc.dc.gov](mailto:7C06@anc.dc.gov)

Commissioner Antawan Holmes  
ANC 7C Chair  
[7C07@anc.dc.gov](mailto:7C07@anc.dc.gov)

  
Jessica R. Bloomfield