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April 24, 2017

VIA IZIS AND HAND DELIVERY

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

**Re: Request for Extension of Time to File a Second-Stage Application
Z.C. Order No. 14-02 - First-Stage PUD and Related Map Amendment @ Various
Lots in Squares 5862, 5865, 5866, and 5867**

Dear Members of the Zoning Commission:

On behalf of the District of Columbia (the "District"), the District of Columbia Housing Authority ("DCHA"), Preservation of Affordable Housing, Inc. ("POAH"), and A&R Development Corporation ("A&R") (collectively, the "Applicant"), this letter serves as a request for a two year extension of the time period in which to file a second-stage PUD application for four parcels within the first-stage planned unit development ("PUD") approved pursuant to Z.C. Order No. 14-02. The first-stage PUD is comprised of Square 5862, Lots 137-143; Square 5865, Lots 243, 249, 254, 259, 260-280, 893, 963-978, 992; Square 5866, Lots 130, 133-136, 141-144, 147-150, 152, 831-835; and Square 5867, Lots 143, 172-174, 890-891, 898 (the "PUD Site"). Z.C. Order No. 14-02, a copy of which is attached hereto as Exhibit A, was approved on December 8, 2014, and was effective on May 29, 2015.

Decision No. E(1) of Z.C. Order No. 14-02 requires the Applicant to file a second-stage application for at least four parcels within the PUD Site within two years of the effective date of Z.C. Order No. 14-02 (i.e., by May 29, 2017). This application requests that the Commission extend this approved time period such that a second-stage application for at least four parcels within the first-stage PUD must be filed no later than May 29, 2019.

The extension request is filed pursuant to Subtitle Z § 705 of the Zoning Regulations for good cause shown herein. A completed Application Form 106 and a check in the amount of \$520.00 made payable to the DC Treasurer for the requisite filing fee pursuant to Subtitle Z § 1600.10 the Zoning Regulations are enclosed.

ZONING COMMISSION
District of Columbia
CASE NO.14-02A
EXHIBIT NO.1

I. INTRODUCTION

A. Factual Background

Pursuant to Z.C. Order No. 14-02, the Commission approved applications for a first-stage PUD and a related Zoning Map amendment from the R-5-A District to the R-5-B and C-2-A Districts for a mixed-use development at the PUD Site. Z.C. Order No. 14-02 required that a second-stage application for at least four parcels on the PUD Site must be filed no later than May 29, 2017.

The approved PUD is a mixed-use development that will bring new mixed-income housing, new public spaces, and new retail/service uses to the Anacostia neighborhood. The approved PUD provides an overall density of 2.09 floor area ratio, with approximately 1,834,317 square feet of gross floor area devoted to residential uses (approximately 1,014 apartment units, 278 row dwellings, 46 flats, and 16 live/work spaces). Approximately 24% of the residential units were approved to be replacement public housing units, and approximately 20% of the residential units were approved to be affordable units reserved for households earning between 60% and 80% of the area medium income. In addition, approximately 55,500 square feet of gross floor area was approved to be devoted to retail/service uses, public space, and new public infrastructure.

B. Jurisdiction of the Zoning Commission

Subtitle Z § 702.1 of the Zoning Regulations states that a first-stage PUD approval shall be valid for a period of one year, unless a longer period of time is specified by the Commission, as was done in this case. Subtitle Z § 705.2 provides that an 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, documenting the following:

- 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 Commission based its original approval of the application that would undermine the Commission's justification for approving the original application; and
- c. The applicant demonstrates with substantial evidence one (1) or more of the following criteria:
 - i. 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;
 - ii. 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

- iii. 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

II. THIS EXTENSION REQUEST WAS SERVED ON ALL PARTIES

The parties to this case included the Applicant, ANC 8C, and the Barry Farm Tenants and Allies Association ("BFTAA"). As indicated on the Certificate of Service included with this filing, the Applicant has served this request for an extension of time on all parties to the initial PUD application, allowing them the required time period to respond.

III. THERE IS GOOD CAUSE FOR THE EXTENSION OF THE PUD VALIDITY

A. The Project Has Experienced Delay Beyond the Applicant's Control

Subtitle Z § 705.2(c)(3) authorizes the Commission to grant an extension of PUD validity for projects where the applicant has demonstrated with substantial evidence "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 PUD order." The current application satisfies this criteria and thus meets the requirements for an extension of the validity of the PUD as set forth below.

Following the Commission's approval of Z.C. Order No. 14-02, an appeal was filed in the D.C. Court of Appeals on August 31, 2015, regarding development of the PUD Site. *See* Case No. 15-AA-1000. The Notice of Appeal is attached hereto as Exhibit B. The appeal was filed by BFTAA, which participated as a party in opposition in the Zoning Commission case.

As indicated in the court docket for Case No. 15-AA-1000, attached hereto as Exhibit C, the oral argument for the appeal was held on September 28, 2016, and additional pleadings have been filed since then. However, the Court has not yet issued a decision in the appeal. Following issuance of the Court's decision and resolution of any issues identified in that decision, the Applicant will be able to move forward with filing a second-stage application. The Applicant anticipates that resolution of the appeal will occur prior to May 29, 2019, such that the Applicant will be able to file a second-stage PUD application prior to May 29, 2019.

As a result of this appeal, the Applicant is unable to comply with the time limits set forth in Z.C. Order No. 14-02. Accordingly, this request for a time extension satisfies the sole criterion for good cause shown as set forth in Subtitle Z § 705.2(c)(3).

B. No Substantial Changes to Approved PUD

In addition to requiring the demonstration of "good cause," Subtitle Z § 705.2(b) requires that 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..."

In this case, there has been no substantial change in any of the material facts upon which the Commission based its approval of the first-stage PUD. The Applicant remains committed to

moving forward with developing the mixed-use project as approved, and fully complying with the conditions and obligations imposed as part of the first-stage PUD.

C. No Hearing is Necessary

Subtitle Z § 705.7 of the Zoning Regulations provides:

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 Subtitle Z § 705.2. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.

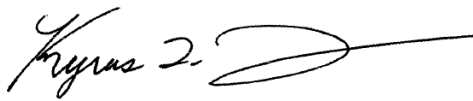
A hearing is not necessary for this request since there are not any material factual conflicts generated concerning any of the criteria set forth in Subtitle Z § 705.2. There is no dispute that there is a pending appeal that has prevented the Applicant from preparing the necessary materials for timely filing a second-stage application for of the PUD Site. Thus, there cannot be any material factual conflicts generated concerning any of the criteria by which the Commission is required to consider this request

IV. CONCLUSION

In light of this demonstration of good cause and for the reasons stated herein, the Applicant respectfully requests that the Commission approve an extension of the first-stage PUD, such that a second-stage application for at least four parcels within the PUD Site must be filed no later than May 29, 2019.

Respectfully submitted,

HOLLAND & KNIGHT LLP



Kyrus L. Freeman
Jessica R. Bloomfield

Attachments

cc: Maxine Brown-Roberts, D.C. Office of Planning (with enclosures, via Hand Delivery)

CERTIFICATE OF SERVICE


I hereby certify that on April 24, 2017, a copy of the foregoing Applicant's Request for Extension of Time was served on the following at the addresses stated below:

Advisory Neighborhood Commission 8C
3125 MLK Jr. Avenue, SE
Washington, DC 20032

VIA U.S. MAIL

Barry Farm Tenants and Allies Association
c/o Aristotle Theresa
CSRL-CRO
1530 P Street, NW
Washington, DC 20005
Actheresa@Stooplaw.com

VIA U.S. MAIL AND EMAIL



Kyrus L. Freeman