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August 29, 2017

VIA IZIS AND HAND DELIVERY

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

**Re: Request for Technical Correction or Minor Modification
Z.C. Case No. 15-18
Initio, LP – Consolidated PUD at Square 1194, Lot 811**

Dear Members of the Commission:

On behalf of Initio, LP (the “Applicant”), we hereby submit this application for either a technical correction or minor modification to ZC Order No. 15-18, dated January 30, 2017, and effective March 10, 2017 (the “Order”); a copy of which is attached as Exhibit A. As discussed in more detail below, the purpose of this application is to amend the planned unit development (“PUD”) such that the minimum land area requirement and waiver of same is evaluated and approved under the 2016 Zoning Regulations (“ZR16”) instead of the 1958 Zoning Regulations. It is our understanding that said modification would result in the dismissal of the appeal of the application filed by the Committee of 100 on the Federal City (“Committee of 100”), which is currently pending in the D.C. Court of Appeals. A copy of the Petition for Review is attached as Exhibit B.

Approved Project

Pursuant to the Order, the Zoning Commission approved a consolidated review of the PUD and a related Zoning Map amendment from the C-2-A Zone District/unzoned to the W-2 Zone District to permit the construction of a mixed-use building that has a restaurant on the ground floor and a four-story apartment house with seven residential units above at 2715 Pennsylvania Avenue, NW (Square 1194, Lot 811) (the “Property”). The approved project has a building height of 60 feet and density of a 3.5 floor area ratio (“FAR”).

Waiver of Minimum Land Area Under 1958 Regulations

The PUD approval also included a waiver of the limits in Section 2402.2 of the 1958 Zoning Regulations, which authorizes the Zoning Commission to waive up to 50% of the minimum area requirement for a PUD in the W-2 Zone District.

Under Section 2401.1(c) of the 1958 Zoning Regulations, the minimum land area for a PUD in the W-2 zone is 15,000 square feet. Pursuant to Section 2401.2, the Zoning Commission may waive not more than 50% of the minimum area requirement, provided:

- (a) The Commission shall find after public hearing that the development is of exceptional merit and in the best interest of the city or country; and
- (b) The Commission shall find one of the following:
 - (1) If the development is to be located outside the Central Employment Area, at least eighty percent (80%) of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto; or
 - (2) If the development is to be located in a portion of the Central Employment area which is in an HR Overlay District, the development shall contain a minimum floor area ratio of 2.0 devoted to hotel or apartment house use.

In this case, the Property consists of only 7,413 square feet and, therefore, is unable to meet the minimum land area of 7,500 square feet that could be achieved by the waiver. As such, the Zoning Commission granted a waiver of the limits of Section 2401.2, taking into account the promulgation of ZR16. Specifically, under Subtitle X § 301.3 of ZR16, an MU-13¹ property of less than 15,000 square feet is eligible for a land waiver to not less than 5,000 square feet where the Zoning Commission finds that the development is of exceptional merit and is in the best interest of the District of Columbia or the country and one (1) of the following:

- (a) The development is identified in an approved Small Area Plan and will be generally not inconsistent with the Small Area Plan;
- (b) The development will be constructed or operated by the District of Columbia or federal government and serves a compelling government interest; or
- (c) If the development is to be located outside the Central Employment Area, at least eighty percent (80%) of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto.

The Commission concluded that although ZR16 did not technically apply to the PUD, the underlying policy considerations that prompted the Commission to adopt it were equally relevant to the Commission's approval of the waiver request. For that reason, and the reasons stated in the Order, the Zoning Commission concluded that the PUD met the existing requirements for waiver under both applicable § 2402.2 and new Subtitle X § 301.3, and waived the 50% limitation of the former and granted a land area waiver to 7,413 square feet. (See Finding of Facts 30-38.)

Appeal by Committee of 100

The Committee of 100 appealed the approval of the subject PUD to the District of Columbia Court of Appeals in April. The bases of the appeal are: (1) the Commission's retroactive

¹ Under ZR16, the W-2 zone converted to the MU-13 zone.

application of its rules to grant the PUD an exception to the minimum land area requirement of 7,500 square feet based upon application of ZR16 regulations, even though the application was evaluated under the 1958 Zoning Regulations; and (2) the Commission's disregard of the plain language of § 2401.2 limiting waivers to 50% of the land area of a lot.

Since the filing of the appeal, the Committee of 100 and the Applicant have agreed upon a course of action that would result in the dismissal of the appeal – the Zoning Commission amend the Order such that waiver of the minimum land area requirement is evaluated under Section X § 301 of ZR16 instead of Section 2401 of the 1958 Zoning Regulations.

Waiver of Minimum Land Area Under ZR16

The W-2 Zone converted to the MU-13 Zone under ZR16. For purposes of the PUD minimum land area requirements, the MU-13 zone is in Zone Group 6, which has a minimum land area requirement of 15,000 square feet. Subtitle X § 301.1. Pursuant to Subtitle X § 301.3, the Zoning Commission may waive the minimum area requirement of Subtitle X, § 301.1 to no less than 5,000 square feet for applications in Zone Group 6, provided the Zoning Commission shall find after the public hearing that the development is of exceptional merit and is in the best interest of the District of Columbia or the country and one (1) of the following:

- (a) The development is identified in an approved Small Area Plan and will be generally not inconsistent with the Small Area Plan;
- (b) The development will be constructed or operated by the District of Columbia or federal government and serves a compelling government interest; or
- (c) If the development is to be located outside the Central Employment Area, at least eighty percent (80%) of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto.

Please note that, as it relates to the subject PUD, the criteria for granting a waiver from the minimum land area requirements is the same under the 1958 Zoning Regulations and ZR16 – the Commission must find, after public hearing, the development is of exceptional merit and is in the best interest of the District of Columbia or the country and, being located outside the Central Employment Area, at least eighty percent (80%) of the gross floor area of the development is used exclusively for dwelling units and uses accessory thereto. The Commission found that the PUD met these criteria when it originally approved the PUD.

Service on Affected Advisory Neighborhood Commission (“ANC”)

Pursuant to Subtitle Z § 703.13, the Applicant is required to formally serve a copy of the subject application on all parties in the original proceeding, including ANC 2E, at the same time that the request is filed with the Office of Zoning. Other than ANC 2E, there were no other parties to the original proceeding. As noted in the Certificate of Service attached hereto, the subject application was served on ANC 2E on August 29, 2017.

Conclusion


Attached for your consideration, as Exhibit C, is a copy of a draft order reflecting the discussions between the Applicant and the Committee of 100 relating to the resolution of the appeal.

As stated above, the Zoning Commission already concluded that the PUD met the existing requirements for a waiver under both the 1958 Zoning Regulations and ZR16. There are no changes to the rationale for the requested waiver, nor are there any changes to approved plans for the project. In other words, there are no changes to the material facts upon which the Zoning Commission based its original approval of the PUD application. As such, and in light of the parties' discussions relating to the appeal, we respectfully submit that it is appropriate and efficient for the Zoning Commission to handle the proposed modification of the PUD as a technical correction or minor modification.

Thank you for your considerate attention to this matter. We remain hopeful of your favorable review of the application.

Respectfully submitted,

HOLLAND & KNIGHT LLP



Leila M. Jackson Batties, Esq.

Attachments

- cc: Jennifer Steingasser, D.C. Office of Planning (w/attachments, via email)
- Joel Lawson, D.C. Office of Planning (w/attachments, via email)
- Anne Fothergill, D.C. Office of Planning (w/attachments, via email)
- Anna Chamberlin, DDOT (w/attachments, via email)

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2017, a copy of the foregoing application for a technical correction or minor modification to ZC Order 15-18, relating to the PUD approved at 2715 Pennsylvania Avenue, NW (Square 1194, Lot 811) was served on the following:

Advisory Neighborhood Commission 2E
3265 S Street, NW
Washington, DC 20007
c/o Peter Sacco, Executive Director
Via email: 2E@anc.dc.gov

Commissioner Jim Wilcox
Single Member District Representative ANC 2E-06
Via email: 2E06@anc.dc.gov

Committee of 100 on the Federal City
c/o Laura M. Richards, Esq.
3524 Carpenter Street, SE
Washington, DC 20020
Via email: lmmrichards@gmail.com

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