

# 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](http://www.hklaw.com)

Kyrus L. Freeman  
202.862.5978  
[kyrus.freeman@hklaw.com](mailto:kyrus.freeman@hklaw.com)

Jessica R. Bloomfield  
202.469.5272  
[jessica.bloomfield@hklaw.com](mailto:jessica.bloomfield@hklaw.com)

May 1, 2018

## **VIA IZIS AND HAND DELIVERY**

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

**Re: Request for Two-Year Extension of Time to Begin Construction  
Square 5785, Lot 839 and part of Lot 906 (“Building 1”)  
Z.C. Order Nos. 08-07 and 08-07A**

Dear Members of the Zoning Commission:

On behalf of Four Points Development, LLC (the “Applicant”), this letter serves as a request for a two-year extension of the time period in which to begin construction of the approved building (“Building 1”) located at Lot 839 and part of Lot 906 in Square 5785 (the “Property”). Building 1 was approved as part of a first-stage planned unit development (“PUD”) pursuant to Z.C. Order No. 08-07, and was approved as a second-stage PUD with modifications pursuant to Z.C. Order No. 08-07A. This request, if approved, would require construction of Building 1 to begin no later than May 22, 2020.

The subject application is filed pursuant to Subtitle Z, Chapter 700 of the 2016 Zoning Regulations (“11 DCMR”) for good cause shown herein. A completed Application Form 106 and a letter from the Applicant authorizing Holland & Knight LLP to file and process the application are attached hereto as Exhibits A and B, respectively. A check in the amount of \$520.00 made payable to the D.C. Treasurer for the requisite filing fee pursuant to 11-Z DCMR § 1600.10 is also enclosed.

## **I. INTRODUCTION**

### **A. Factual Background**

Pursuant to Z.C. Order No. 08-07, dated September 9, 2013, and effective on October 25, 2013 (Exhibit C), the Zoning Commission approved a first-stage PUD a related Zoning Map amendment from the C-2-A and C-M-1 Districts to the C-3-A District for Square 5772, Lots 827, 829, 831, 880, 984, 1017, and 1019; Square 5783, Lots 829 and 1018; Square 5784, Lots 898, 899,

ZONING COMMISSION  
District of Columbia  
CASE NO.08-07D  
EXHIBIT NO.1

and 900; and Square 5785, Lots 839 and 906 (collectively, the “PUD Site”).<sup>1</sup> The overall PUD Site is generally bounded by U Street to the north, Martin Luther King, Jr. Avenue to the east, Chicago Street to the south, and Interstate 295 to the west, all located in the southeast quadrant of the District.

Pursuant to Z.C. Order No. 08-07A, dated March 30, 2015, and effective on May 22, 2015 (Exhibit D), the Zoning Commission approved a second-stage PUD and modifications to allow development of Building 1 with a six-story residential building with approximately 71 residential units, 80% of which will be set aside for households earning up to 60% of the area medium income (“AMI”). Z.C. Order No. 08-07A, Decision No. C.1, required the Applicant to file a building permit application for Building 1 no later than May 22, 2017, with construction to begin no later than May 22, 2018. The Applicant filed a building permit application for Building 1 on June 15, 2015, thus meeting the first condition in Decision No. C.1. However, due to unforeseen litigation described below, the Applicant herein requests a two-year time extension such that construction of Building 1 must begin no later than May 22, 2020.

## **B. Jurisdiction of the Zoning Commission**

Pursuant to 11-Z DCMR § 705.2, the Zoning Commission is authorized to extend the time periods set forth in 11-Z DCMR § 702.2 (two year requirement to file a building permit application) and 11-Z DCMR § 702.3 (three year requirement to begin construction), provided the following conditions 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 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 that there is good cause for such extension, as provided in 11-Z DCMR § 705.2(c).

The sole substantive criterion for determining whether a PUD should be extended is whether there exists “good cause shown.” 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

---

<sup>1</sup> The original PUD and subsequent modifications were approved under the 1958 Zoning Regulations. On September 6, 2016, the provisions of ZR58 were repealed and replaced with the 2016 Zoning Regulations. Under the 2016 Zoning Regulations, the approved C-3-C District converts to the MU-9 District.

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.

## **II. COMPLIANCE WITH STANDARDS FOR EXTENDING PUD VALIDITY**

### **A. Extension Request Served on All Parties**

Other than the Applicant, the only other party to the case was Advisory Neighborhood Commission ("ANC") 8A. As indicated in the Certificate of Service attached hereto, the Applicant served this request for an extension of time on ANC 8A, thus providing the required time period to respond.

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

There has been no substantial change in any of the material facts upon which the Zoning Commission based its approval of Building 1 in Z.C. Order No. 08-07A. The Applicant remains committed to moving forward with developing the residential building and fully complying with the conditions and obligations imposed as part of the PUD approval.

### **C. Good Cause Shown**

Pursuant to 11-Z DCMR § 705.2(c)(3), the Commission is authorized to grant an extension of PUD validity for projects where the applicant demonstrates 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 order." This application satisfies the criteria of 11-Z DCMR § 705.2(c)(3) and thus meets the requirements for an extension of the validity of the second-stage PUD for Building 1.

1. As set forth in the affidavit of Keith Turner attached hereto as Exhibit E (the "Affidavit"), on June 15, 2015, the Applicant filed a building permit application for Building 1, thus satisfying the first condition in Decision No. C.1 (Permit No. B1508906) (Exhibit A of the Affidavit). Following submission of the building permit application, the Applicant also undertook the following actions to move forward with development of Building 1:
  - a. On July 16, 2015, the Applicant participated in a PDRM meeting with DDOT. Confirmation of the scheduled meeting is attached as Exhibit B to the Affidavit;
  - b. On August 14, 2015, the Applicant filed a Sheeting and Shoring permit application with DCRA (Permit No. SH1500070) (Exhibit C to the Affidavit); on August 27, 2015, the Applicant filed a Sheeting and Shoring permit application with DDOT (Tracking No. 114354) (Exhibit D to the Affidavit); and on August 31, 2015, the

Applicant filed a Sheeting and Shoring permit application with DC Water (Tracking No. 15-329563) (Exhibit E to the Affidavit).

- c. On August 28, 2015, the Applicant filed an application to DC Water for Large Water Service (Tracking No. 15-329571) (Exhibit F of the Affidavit);
- d. On November 25, 2015, the Applicant filed a tree removal permit to DDOT, which was approved on February 10, 2016 (Permit No. PA119720) (Exhibit G to the Affidavit);
- e. On December 1, 2015, the Applicant paid \$13,540.53 for the issuance of the building permit (Exhibit H to the Affidavit);
- f. On December 18, 2015, the Applicant filed a public space permit application with DDOT, which was approved with conditions on April 28, 2016 (Tracking No. 120696) (Exhibit I to the Affidavit); and
- g. Throughout this process, the Applicant worked closely with District agencies and received approvals on the building permit application and the DCRA sheeting and shoring permit application from all agencies other than DDOT and DC Water. The DDOT sheeting and shoring permit has been fully approved pending payment.

During this time the Applicant also applied for and secured a variety of debt and equity financing sources for Building 1 as follows:

- a. On November 1, 2014, the Applicant submitted a request to DCHFPA for acquisition and new construction financing for Building 1, and on March 24, 2015, DCHFPA issued a resolution confirming the Applicant's eligibility to receive Low Income Housing Tax Credits, and recommending the issuance of both taxable and tax-exempt multifamily housing mortgage revenue bonds in an amount up to \$14,000,000.00 for the project (Exhibit J to the Affidavit).
- b. On June 2, 2014, the Applicant submitted a funding proposal to DHCD, and on October 8, 2014, the Applicant received a letter from DHCD indicating that funding had been reserved for the development of Building 1, with the final funding recommendation to be determined at a later date (Exhibit K to the Affidavit).

Despite the Applicant's diligent efforts to move forward with development of Building 1, in the fall of 2015 the Applicant recognized the existence of a disagreement with its development partner regarding the proposed phasing and uses for the PUD Site, including for the Property. Although the Applicant's initial dispute was resolved through a First Amendment to Option Agreement, dated September 21, 2015, disputes reemerged shortly thereafter and were followed by several months of negotiation.

On January 13, 2016, the Applicant filed a complaint against its development partner in the Superior Court of the District of Columbia. Following almost a year of litigation, on October 18, 2016, the case was ultimately settled and dismissed. *See* letter from John Muir, litigation council for Four Points, and associated court docket (Exhibit L to the Affidavit).

As a result of the litigation, the Applicant had to suspend all development work on Building 1 for almost a year, which remained suspended due to a subsequent related dispute, which was finally resolved and memorialized in an amendment to Four Points' Option Agreement on September 18, 2017. Since that time, the Applicant has focused development efforts on preparing a second-stage PUD application for Square 5784, Lots 899, 900 and 1101 ("Building 4"), which it filed with the Zoning Commission on March 9, 2018. *See* Z.C. Case No. 08-07C.

Now that the Applicant has settled the litigation and the remaining disagreements, the relationship between the Applicant and its development partner is better than ever such that the Applicant is now able to continue to pursue the development of Building 1. However, there are a variety of actions and approvals that need to occur prior to beginning construction, including the following:

- a. The Applicant must reengage its permit expediter to reinstate all permit applications that were previously filed, reviewed, and/or granted for Building 1, but have since lapsed.
- b. The Applicant must resubmit a proposal, review bids, and reengage a new general contractor for development of Building 1.
- c. The Applicant must re-secure all financing that was lost during the litigation process, since the debt and equity sources previously secured for Building 1 are no longer valid and will need to be reengaged. For example, as noted in DHCD's October 8, 2014 letter, failure to submit all requested items can result in the withdrawal of a funding reservation, and that being the case, awardees are encouraged to resubmit their applications through future DHCD requests for proposals.
- d. Throughout the litigation process and subsequent renegotiations, the Applicant continued to actively solicit financing for the project (*see*, e.g. letter dated September 2, 2016, to Enterprise Community Investment outlining the terms and conditions under which Enterprise could make an equity investment in Building 1 (Exhibit M to the Affidavit), and letter dated February 24, 2017, from Bellwether Enterprise submitting a non-binding debt financing proposal for Building 1 (Exhibit N to the Affidavit)). At this time, the Applicant needs to continue to reengage and secure financial sources to move forward with development and construction of Building 1.

Although the Applicant has begun to collect materials to resume the development process, it is anticipated that another 24 months are necessary to complete the process and obtain all necessary permits to begin construction of Building 1. As a result of this lengthy process, prolonged by unanticipated litigation and additional time needed to renegotiate various terms set forth in the Applicant's Option Agreement, the Applicant is unable to begin construction of Building 1 within the time limits set forth in Z.C. Order No. 08-07A.

Notwithstanding the delay, the Applicant is committed to moving forward with development of Building 1. To date, the Applicant has invested substantial resources in the Property, including legal, architectural, engineering, and other consulting fees. There is no

financial advantage for the Applicant not to develop Building 1, and it has every incentive to do so as soon as feasible.

### III. NO HEARING 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 11-Z DCMR § 705.2. The only other party to this case was ANC 8A, to whom the Applicant has served a copy of this request. There is no dispute that there is pending litigation that prevents the Applicant from proceeding with construction of Building 1 at this time. Thus, there cannot be any material factual conflicts generated concerning any of the criteria by which the zoning Commission is required to consider this request.

### IV. ANC CONTACT

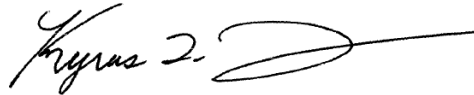
The Applicant has engaged with Advisory Neighborhood Commission (“ANC”) 8A over numerous years regarding the PUD project, and has more recently discussed its proposal to submit a request for an extension of time for Building 1 with the ANC.

### V. CONCLUSION

In light of this demonstration of good cause and for the reasons stated herein and in the attached exhibits, the Applicant respectfully requests that the Commission approve a two year extension of time to begin construction of Building 1, such that construction must begin no later than May 22, 2020. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By:   
Kyrus L. Freeman  
Jessica R. Bloomfield

Attachments

cc: Joel Lawson, D.C. Office of Planning (*see* Certificate of Service)  
Maxine Brown-Roberts, D.C. Office of Planning (w/enclosures, via Email)  
Anna Chamberlin, DDOT (w/enclosures, via Email)  
Advisory Neighborhood Commission 8A (*see* Certificate of Service)  
Greta Fuller, ANC 8A06 (w/enclosures, via U.S. Mail)

**CERTIFICATE OF SERVICE**

I hereby certify that on May 1, 2018, electronic copies of the foregoing application for an extension of time to begin construction of Building 1 in Square 5785, Lot 839 and part of Lot 906, approved by Z.C. Order No. 08-07 and Z.C. Order No. 08-07A, was served on the following, with hard copies delivered on May 2, 2018:

Mr. Joel Lawson  
D.C. Office of Planning  
1100 4<sup>th</sup> Street, SW  
Washington, DC 20024

Via Email and Hand Delivery

Advisory Neighborhood Commission 8A  
2100-D Martin Luther King Jr. Avenue, SE  
Washington, DC 20020

Via U.S. Mail



Jessica R. Bloomfield, Esq.  
Holland & Knight LLP