

# Holland & Knight

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May 16, 2017

## **VIA IZIS**

Zoning Commission for the  
District of Columbia  
Office of Zoning  
441 Fourth Street, NW, Suite 210-S  
Washington, DC 20001

**Re: MidAtlantic Realty Partners, LLC (ZC Case No. 06-14D)  
Second Post-Hearing Submission**

Dear Commission Members:

This letter is filed on behalf of MidAtlantic Realty Partners (the “Applicant”) in response to the Zoning Commission comments on the above-referenced application during the public meeting on May 8, 2017. The submission is organized as follows: PUD chronology and timing of construction of residential towers and provision of amenities; proposed phasing plan with currently requested PUD modification; and information of record concerning phasing of the project.

### **PUD Chronology**

The Applicant was granted two extensions of the PUD approval. The latter (ZC Order No. 06-14C), required that an application for permits for the project be filed no later than June 29, 2013, and construction commence no later than June 29, 2014. Permits for the residential building on the west side of the PUD were issued in 2012; construction was completed in 2014; and the residential building was fully leased in 2015.

Since 2011, the Applicant has actively marketed the office component of the project for lease opportunities, including multiple proposals to the Department of Justice and proposals to CIS and FCC, but the project was never selected as an office site. The lack of success on commercial preleasing as well as the configuration of the approved office towers caused the Applicant to pursue the current PUD modification (06-14D).

A detailed chronology related to the PUD is attached as Exhibit A. Based on the chronology, including the public hearing for the previous modification and approval of same, we submit that the Applicant has diligently pursued the construction of the project. The vesting of the PUD, or any change related to the timing for the construction of the project, is material to the entitlements for the Property.

#### Revised Proposed Phasing Schedule

The Applicant respects the Zoning Commission's desire to have a phasing schedule for the construction of the North Tower and South Tower proposed for the east side of the PUD site. Because there may be different capital sources for each tower, or the timing of construction of one tower may be adversely affected by the market, the Applicant proposes that the timing requirements for the towers be bifurcated, with each tower separately subject to the requirements of Subtitle X, Sec. 702.2, as follows:

- The approval of the PUD Modification for the North Tower shall be valid for a period of two (2) years from the effective date of the order. Within such time, an application must be filed for a building permit, with construction to commence within three (3) years of the effective date of the order.
- The approval of the PUD Modification for the South Tower shall be valid for a period of two (2) years from the effective date of the order. Within such time, an application must be filed for a building permit, with construction to commence within three years of the effective date of the order.
- The Applicant may seek extensions of the time periods for each tower, respectively, in accordance with Subtitle Z, Section 705 of the Zoning Regulations. If no application for a permit is filed, construction has not started within the period specified, or no extension is granted, the approval for the unconstructed portion of the PUD shall expire, the zoning shall revert to the pre-existing regulations and map.

#### Testimony Regarding Phasing

During the public meeting on May 8, 2017, the Zoning Commission expressed concern about the vesting of the PUD and prior representations about the phasing of the project. We have reviewed the transcripts from the hearing for the original PUD (06-14) and the hearing for the PUD Modification (06-14B) in order to clarify the record.

At the public hearing for the original PUD approval, Fred Rothmeijer of MidAtlantic Realty Partners testified that it was the Applicant's intention to build the entire project at once, instead of in phases. Specifically, when asked by Commissioner Parsons whether the office building would be constructed first, Mr. Rothmeijer responded, "It is our intent to build this all at

once.” (See Page, Lines 12-17 of transcript attached as Exhibit B. Emphasis added.) The Applicant does not dispute this representation as the intention at the time of the original PUD approval. However, as outlined in the attached Exhibit A, a series of market-related occurrences precluded construction of the PUD at one time.

At the public hearing for the PUD modification, when asked by then Vice Chair Konrad Schlater whether the PUD was moving forward as a single phase project or multi-phased project, Matthew Robinson of MidAtlantic Realty Partners testified that the PUD would most likely move forward in multiple phases. (See Page 44, Lines 16-20 of hearing transcript, attached as Exhibit C.) Mr. Robinson testified that the residential/hotel component would be built first, along with the plaza, the monumental stair, and some of the other public amenities, and then the office would be constructed, based on marketability and pre-leasing of the space. (See hearing transcript, Page 45, Lines 2 – 11. Emphasis added.)

Steven Sher, the Applicant’s expert witness at the hearing, went on to testify that the hotel/residential building would be constructed first, and the office building would be constructed afterwards in either one or two phases. In this testimony, Mr. Sher indicated that the ability to start the office building would depend on market conditions at the time. Finally, when asked by Vice Chair Schlater whether the permit and construction for the residential/hotel building vested the PUD, Mr. Sher responded that was the case so long as the Applicant was diligently pursuing the construction of the project. (See Page 47, Lines 5 - 11 of the hearing transcript.)

### Conclusion

We submit that, based on the foregoing, the Applicant has diligently pursued the construction of the PUD. We remain hopeful of the Commission’s acceptance of the proposed phasing schedule and favorable consideration of the application.

Sincerely yours,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink that reads "Leila Batties". The signature is written in a cursive, flowing style.

Leila Batties

cc: Advisory Neighborhood Commission 5E c/o Chair Bradley Thomas  
(via email: [5E05@anc.dc.gov](mailto:5E05@anc.dc.gov))  
Commissioner Hannah Powell, ANC 5E-03 (via email: [5E03@anc.dc.gov](mailto:5E03@anc.dc.gov))  
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