

STOOP LAW

A COMMUNITY JUSTICE PROJECT

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October 22, 2018

**Re: CARE Motion to Reconsider Extension of Time –
ZC Case No. 08-07D**

Dear Zoning Commission,

CARE

CARE is a community organization located in Anacostia, with members living within 1,000 feet of the proposed Reunion Square development. Many CARE members live within blocks of the proposed Reunion Square development. CARE’s counsel lives as well as has an office blocks from the site.¹ CARE's purpose is to increase civic participation by raising awareness to issues important to the lives of Current Area Residents East of the River, including those issues of creating and preserving Affordable Housing capable of inhabitation by current area residents. CARE members have testified before council and the zoning commission and meet both formally and informally. Many CARE members will be harmed economically through increased rents and tax increases caused by dramatically changing the economic demographics of the immediate area. DHCD has warned that development of this type, stating that the “in-migration of wealthier whites is producing gentrification that is reducing the District’s supply of housing affordable to households with modest incomes and threatens to re-segregate these gentrifying neighborhoods as virtually all-white.” *Analysis to Impediments to Fair Housing 2006-2011*, p.2.

Waiver to File a Motion to Reconsider

Pursuant to 11-Y DCMR §101.9 the Zoning Commission may allow non-parties to file a motion for reconsideration if there is good cause shown. The good cause shown in this matter is that the 08-07D is derivative of a case² filed over 10 years ago when there was no ANC for the single member district for the site where the time extension has been requested. Therefore, community members were vastly under the impression that the development had been approved and there was nothing that could be done to contest. While a time extension was granted for the fourth order issued in the project, it was too late. The people that would have opposed, did not, because they saw no point. However, it has come to community members attention that a questionable

¹ CARE is not applying for party status so thus is not submitting member information but rather seek for this Motion to be placed into the record for the Zoning Commission to consider.

² 08-07

time extension has been granted and several community members would like to oppose the time extension to encourage participation from the full community and not just those that attend every ANC meeting and keep abreast of every happening with a development project that has languished for ten years.

Further good cause exists in that since there was no ANC for the single member district at the time of 08-07 there was no advocate to request that the Zoning Commission gather written reports from DHCD as required by 11-X DCMR §308.4 (Mandatory Written Reports) and 11-X DCMR §306.11 (Housing Linkage Requirement). Moreover, 10 years ago the zoning commission routinely disregarded concerns the Court of Appeals has found the Zoning Commission must consider such as displacement and rent increases. In ten years, the landscape of DC has changed. Not only legally, but demographically. In any event, Applicant will not be prejudiced by granting this request for reconsideration because they were the cause of the delay for which they seek extension. Applicant cannot seek relief from applicable statutes and common law then complain of prejudice when their actions in derogation are called to account.

Unlawful Time Extension

CARE wishes to raise to the Zoning Commission's attention that it was within Four Points reasonable control to proceed within established timeframes. 11-Z DCMR 705.2 (c) (3). A disagreement between development partners does not meet the criterion of 11-Z DCMR 705.2 (c) (3) since it is within the reasonable control of partners to work together without disagreement necessitating litigation. *Hotel Tabbard Inn v. District of Columbia Zoning Com'n*, 661 A. 2d 150,152 (Extension granted when outside parties filed litigation outside Applicant's reasonable control). There would be no point to time limitations if Applicant's could just sue themselves to skirt them, an outcome that would be absurd. *Young v U-Haul Co.*, 11 A3d 247, 250-51. (actual language of a statute to be ignored to avoid the absurdity that would result if read literally) *see also BFTAA v. District of Columbia Zoning Com'n*, 182 A.3d 1214, Fn 21 (Reading the "or" in the statute as an "and" to avoid an absurd reading of a statute.) Therefore, the zoning commission abdicated its duties under 11-Z DCMR 705.3 (a) by making legal conclusions that are plainly erroneous.

Further, even if a disagreement between development partners is not prima facie within an Applicants reasonable control, a litigation between development partners necessarily generates material factual conflict as to whether the delay caused by the litigation was outside of Applicant/development partners reasonable control. Thus, a hearing should have been granted to uncover the facts underlying the litigation which Applicants allege was prohibitive of timely development.

Respectfully Submitted,

S/A Theresa

Aristotle Charles Theresa
Attorney at Law

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing **MOTION FOR RECONSIDERATION** was served this 22nd day of October, 2018 by electronic and *US mail.

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