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October 29, 2018

VIA Z.C. SUBMISSIONS

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

**Re: Z.C. Case No. 08-07D
Two-year Time Extension for Approved Second-Stage PUD (“Building 1”)
Applicant’s Opposition to “CARE Motion to Reconsider Extension of Time”**

Dear Members of the Commission:

On behalf of Four Points, LLC (the “Applicant”), and for the reasons stated below, we hereby oppose the “CARE Motion to Reconsider Extension of Time” (the “Motion”) filed by Aristotle Theresa on behalf of CARE. The Motion is dated October 22, 2018 and included as Exhibit 8 in the record of Z.C. Case No. 08-07D. According to the Motion, CARE is a “community organization located in Anacostia, with members living within 1,000 feet of the proposed Reunion Square development.” *See* Motion, p. 1. The Motion requests that the Zoning Commission reconsider Z.C. Order No. 08-07D, which granted a two-year time extension to begin construction of the approved building located at Lot 839 and part of Lot 906 in Square 5785 (“Building 1”).

Building 1 received second-stage PUD approval pursuant to Z.C. Order No. 08-07A, which became final and effective on May 22, 2015, and required construction to begin by May 22, 2018. Z.C. Order No. 08-07D extended the construction start date to May 22, 2020.

1. The Motion should be denied because it does not meet the requirements of 11-Z DCMR § 700

A. The Motion was not filed by a party

The Motion should be denied because it does not meet the clear requirements of 11-Z DCMR § 700.3, which states that “[a] motion for reconsideration, rehearing, or re-argument of a final order in a contested case under Subtitle Z § 201.2 *may be filed by a party* within ten (10) days of the order having become final. The motion shall be served upon all other parties” (emphasis added).

In this case, CARE was not a party to Z.C. Case No. 08-07A (the second-stage approval of Building 1 approved in 2015) or Z.C. Case No. 08-07D (the two-year extension of the second-stage approval of Building 1 approved in 2018) and therefore the Motion should be denied since it does not meet the requirement of 11-Z DCMR § 700.3.

The Zoning Commission has repeatedly stated the importance of 11-Z DCMR § 700.3 (and its predecessor 11 DCMR § 3029.5 of the 1958 Zoning Regulations). *See, e.g.* Z.C. Order No. 11-24, p. 3 (denying a motion for reconsideration filed by a non-party and reiterating that “only the existence of ‘extraordinary circumstances’ would justify the waiver of the requirement that only a party may file a motion for reconsideration, such as when no notice of a hearing is given”); Z.C. Order No. 16-07(1), p. 2 (stating that the motion for reconsideration filed by the non-party made “no effort to explain why it as a non-party should be able to file a motion for reconsideration, but instead expresses concerns over impacts of the application that it could have presented during the hearing had it chose to participate”); and Z.C. Order No. 15-29(1) (noting that a “speculative assertion... does not furnish good cause for waiving the Party Status Requirement, or for that matter, granting a motion for reconsideration”).

Given that CARE was not a party in Z.C. Case No. 08-07A (the second-stage approval of Building 1 approved in 2015) or Z.C. Case No. 08-07D (the two-year extension of the second-stage approval of Building 1 approved in 2018), the Motion does not meet the party requirement of 11-Z DCMR § 700.3 and thus should be denied.

B. CARE does not meet the standards of 11-Z DCMR § 101.9 for waiving the party requirement

Pursuant to its authority in 11-Z DCMR § 101.9, the Commission may, for good cause shown, waive any of the provisions of Subtitle Z if, in the judgement of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

In this case, CARE has not demonstrated any good cause for waiving the party requirement, and granting a waiver from 11-Z DCMR § 700.3 to permit the filing of the Motion will prejudice the Applicant. CARE argues that the party requirement should be waived in this case since:

“The good cause shown in this matter is that the 08-07D is derivative of a case¹ 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.” *See* Motion, p. 1.

However, this argument ignores the fact that the extension was for the second-stage approval for Building 1, which was granted three years ago in 2015, not ten years ago as claimed by CARE. In fact, during the second-stage approval process, the ANC and other community organizations and individuals actively participated in the public hearing process. *See, e.g.*

¹ 08-07

testimony presented by Single Member District (“SMD”) Commissioner Greta Fuller (ANC 8A06) at the December 18, 2014 public hearing; ANC letter dated December 3, 2014, submitted to the case record with a draft community benefits agreement; party status request filed by the Concerned Citizens of Anacostia (“CCA”); testimony from five individuals in support of the application and two individuals in opposition to the application at the public hearing; and letters in support of the application filed by 43 individuals and local organizations. *See* Zoning Commission public hearing transcript dated 12/18/2014 and Exhibits 23, 26-31, 34-68, 70-71, 76, and 78.

In addition, the Applicant presented and described the extension request at ANC 8A’s regularly-scheduled public meetings on May 1, 2018 and June 5, 2018, and at an ANC SMD meeting on May 8, 2018. Thus, CARE’s assertion that the party requirement should be waived now because of alleged inadequate ANC representation ten years ago is unfounded as it applies to the Commission’s review and approval of the second-stage PUD for Building 1 and the extension thereof. As such, CARE has not provided any legitimate basis for waiving the party requirement of 11-Z DCMR § 700.3, and thus their motion should be denied.

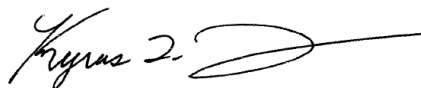
Moreover, reopening the record to allow a non-party to file documents after the PUD extension application was thoroughly reviewed and supported by the Office of Planning, and approved by the Zoning Commission following deliberations at a public meeting, would be prejudicial to the Applicant. CARE requests a hearing to “uncover the facts underlying the litigation which Applicants allege was prohibitive of timely development.” *See* Motion, p. 2. However, having a hearing of this nature is not supported in the Zoning Regulations; ignores the evidence in the record of Z.C. Case No. 08-07D that documents the history of the litigation; and would put the Applicant (and the Zoning Commission) in the position of arguing with CARE (a non-party to the Zoning Commission case and a non-party to the litigation at issue) about the merits of a lawsuit that was pending before and decided by a court.

Based on the foregoing, the Motion should be denied because CARE was not a party in any of the underlying Zoning Commission cases and did not show any good cause for waiving the requirements of 11-Z DCMR § 700.3.

Thank you for your consideration of the Applicant’s request.

Sincerely,

HOLLAND & KNIGHT LLP



Kyrus L. Freeman
Jessica R. Bloomfield

cc: Maxine Brown-Roberts, Office of Planning (see Certificate of Service)
Advisory Neighborhood Commission 8A (see Certificate of Service)
Commissioner Greta Fuller, ANC 8A06 (via U.S. Mail)
Aristotle Theresa, Counsel for CARE (via Email)
Alan Bergstein, Office of the Attorney General (via Email)

CERTIFICATE OF SERVICE

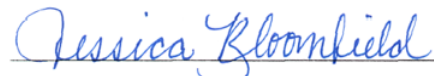
I hereby certify that copies of the Applicant's Opposition to the CARE Motion to Reconsider Extension of Time was sent to the following on October 29, 2018:

Maxine Brown-Roberts
D.C. Office of Planning
1100 4th Street, SW
Washington, DC 20024

Via Email

Advisory Neighborhood Commission 8A
2120 Martin Luther King Jr Avenue, SE
Washington, DC 20020

Via U.S. Mail



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