

September 30, 2019

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VIA IZIS

Anthony Hood, Chairperson
D.C. Zoning Commission
441 4th Street, NW, Suite 200S
Washington, DC 20001

**RE: ZC Case No. 19-01 – Wesley Hawaii LLC
Applicant’s Post-Hearing Submission**

Chairperson Hood and Honorable Members of the Commission:

On behalf of Applicant Wesley Hawaii LLC (the “Applicant”), we hereby provide the following information and responses requested by the Zoning Commission during the public hearing on the subject application, which was held on September 16, 2019 (the “Hearing”). The application proposes a 70-unit all-affordable residential building (the “Project”) at 1 Hawaii Avenue NE (the “Property”).

I. Summary of Public Benefits and Amenities

The Zoning Commission requested that the Applicant file a summary of the public benefits and amenities that the Applicant is offering in connection with the proposed planned unit development. In response to this request, a list of the Applicant’s public benefits and amenities is attached at **Tab A**. This list is also reflected in the Applicant’s proffers and conditions submitted in the record at Exhibit 42.

During the Hearing, the Commission inquired as to the enforceability of two of the Applicant’s proffered public benefits: reserving meeting space in the Project’s first floor amenity room for the Fort Totten Civic Association and payment of \$2,500 per year for 10 years to the Fort Totten Civic Association. In addition to the enforceability, the Commission requested confirmation that the two public benefits meet the requirements of Subtitle X § 305.3 in the Zoning Regulations.

First, as clarified in the Applicant’s proffers and conditions, the two public benefits are enforceable through a written letter of intent that will be signed by the Applicant and issued to the Fort Totten Civic Association. *See* Ex. 42. The letter of intent will be provided to the Zoning Administrator prior to the issuance of a certificate of occupancy for the Project. *See* Ex. 42.

Additionally, the Applicant will make its first payment of \$2,500 to the Fort Totten Civic Association before the certificate of occupancy. *See* Ex. 42.

Second, under Subtitle X § 305.5(a), the monetary contribution and meeting space are “tangible and quantifiable.” The signed letter of intent will function as the Applicant’s written confirmation to arrange for the completion of the proffered public benefits in accordance with § 305.3(b). The public benefits satisfy § 305.3(c) because they benefit a civic association that represents the immediate surrounding area to the Project. Finally, under Subtitle X § 305.5(d), a monetary contribution is permitted so long as no certificate of occupancy is issued until the applicant provides proof that the contributions “have been or **are being** provided.” (emphasis added). Before the certificate of occupancy is issued for the Project, the Applicant will have provided proof that one payment of \$2,500 has been made and the remaining nine payments “are being provided” to the Fort Totten Civic Association. Accordingly, the signed letter of intent is an enforceable promise from the Applicant to the Fort Totten Civic Association as to the public benefits proffered in this planned unit development.

II. Confirmation of Lot Occupancy and Open Space

During the Hearing, the Commission requested confirmation as to the Project’s lot occupancy as well as the percentage of open space on the lot. As depicted in the architectural plans, the Project will have a lot occupancy of 53%. *See* Ex. 26A1, Sheet A0.02. The lot occupancy is well under the maximum permitted lot occupancy of 60% in the RA-2 zone.

The Project will maintain a significant amount of open, green space around the Property. Notably, there are building restriction lines along each street frontage, with additional public space between each building restriction area and the adjacent right-of-way. For example, at the southwestern corner of the site, there is a substantial portion of open, green space that is not part of the Property and, therefore, cannot be counted toward lot occupancy. This public space will remain open, and the Applicant has committed to landscaping this space, including substantial tree plantings. After accounting for the public space around the Property, approximately 66% of the land between Allison Street, Rock Creek Church Road and Hawaii Avenue will remain open with an enlarged green area.

III. Children’s Play Area

The Commission inquired as to the size of the proposed children’s play area. The designated children’s play area is 580 square feet. *See* Ex. 26A1, Sheet A1.00. The Applicant will confirm the programming for the children’s play area before obtaining a certificate of occupancy for the Project. The Applicant also notes that the play area is located in public space and, therefore, requires the approval of the Department of Transportation’s Public Space Committee. Accordingly, the Applicant has requested flexibility based on any requirements or approvals from the Public Space Committee.

IV. Executive Summary of Agreement with Tenants

At the Hearing, the Zoning Commission requested the Applicant provide an executive summary of the agreement (the “Agreement”) between the Applicant and the 1 Hawaii Ave NE Tenant Association (the “Tenant Association”). As stated in the record, the Applicant and Tenant

Association entered into the Agreement dated September 12, 2017 to ensure certain rights for tenants in connection with the Applicant's purchase and redevelopment of the Property.¹ At the time of negotiating the Agreement, the Tenant Association was represented by counsel. The Tenant Association still receives legal counsel on the Agreement and tenants' rights with regard to the Project.

The Applicant has proffered that the temporary relocation plan for tenants, which is incorporated in the Agreement, is a public benefit of this application. As it pertains to the relocation plan, the Agreement is summarized as follows:

Temporary Relocation (Paragraph 8(a-e))

During construction of the Project, the Applicant will temporarily relocate tenants from the existing building at the Property (the "Existing Building"). The Applicant expects the temporary relocation to last approximately 18 months; however, if tenants are relocated for more than 20 months due solely to the Applicant's conduct, then rent shall be abated by 25% during any remainder of the temporary relocation.

Temporary relocation units will be of comparable or better size as the tenant's unit at the Existing Building. All temporary relocation units will be located in the District of Columbia, and the Applicant will use best efforts to locate temporary relocation units within 2 miles of the Property.

The Applicant will pay for moving expenses, including transfer of utilities, boxes and packing tape. The Applicant will employ a relocation specialist that will work directly with tenants to accommodate their needs during relocation, including, but not limited to, whether relocation would present a hardship in terms of access to transportation and school placement, packing assistance, and special needs/reasonable accommodations related to the temporary relocation unit.

Rent (Paragraph 9(a-d))

Before and after completion of the Project, rent shall not be increased any more frequently than once every 12 months and not in excess of the amount permitted under D.C. Code §§ 42-3502.08(h), 3502.24. If those code sections are no longer in effect, rent cannot be increased in excess of the annual percentage increase in the Consumer Price Index for the D.C. metropolitan area plus 2%. Additional rent protections apply to tenants who are elderly or have disabilities.

During temporary relocation, tenants will pay the same rent due under their lease for the Existing Building. The Applicant will pay for any additional utilities beyond what tenants are pay in the Existing Building.

¹ Pursuant to the terms of the Agreement, only tenants that lived at the Property at the time the Agreement was executed are subject to the Agreement.

Tenant Association Legal Fees (Paragraph 11)

The Applicant will pay for the legal fees and expenses of the Tenant Association in connection with negotiating the Agreement and any further representation through construction of the Project up to a maximum of \$50,000.

Additionally, during the pendency of the Application, the Applicant had several meetings with the Tenant Association to discuss tenants' rights in connection with this application, including clarifying aspects of the relocation plan. In particular, the Applicant worked with the Tenant Association and its counsel to further clarify the type/size of units that tenants would be entitled to in the Project, once completed.² As part of these continued discussions, the Applicant provided a supplemental agreement to each qualifying tenant, which included the following:

Unit Sizes in New Building (Supplemental Agreement)

All tenants subject to the Agreement are entitled to return to the Project, once constructed. Tenants are entitled to a unit with the same number of bedrooms as their unit in the Existing Building. For tenants in a studio or one-bedroom apartment, the new unit will have no less than the total square feet in the existing building. For tenants in a two-bedroom apartment, they will be able to return to a two-bedroom unit in the Project. Since some two-bedroom units in the Project are slightly smaller than the Existing Building, these tenants are also entitled to a pro rata reduction in their rent at the Project for an amount equal to the percentage difference in square footage between the apartment in the Existing Building and the Project.

V. Traffic Mirror

The Applicant has attached at **Tab B** an updated cellar and ground floor plan depicting the approximate location of a traffic mirror along the Project's driveway. The traffic mirror addresses comments from the Department of Transportation and Office of Planning. *See* Ex. 28. The traffic mirror will make ingress and egress to the parking garage safer by improving visibility.

VI. Solar Panels

At the Hearing, the Commission inquired as to the Applicant's ability to provide solar panels at the Project. Although the architectural plans depict solar panels on the roof of the Project, the inclusion of solar panels is subject to availability and proper funding mechanisms. To that end, the Applicant continues to explore avenues to finance the solar panels. Since the Applicant is unable to confirm the financing at this stage, it cannot fully commit to providing solar panels at the Project. Nonetheless, the Applicant reiterates its solar energy goal for the Project, and the Applicant has proffered that it will achieve LEED-Gold status for the Project.

² The letter of support from the Tenant Association (Ex. 20) references the negotiations and supplemental agreement concerning unit sizes and rent in the proposed building.

VII. Confirmation of Record Lot Number

During the Hearing, the Commission inquired as to the subdivision process for the Property. Prior to filing the subject application, the Property was identified as Parcel 0124/0077. During the pendency of the application, the Applicant filed for and obtained a record lot from the Department of Consumer and Regulatory Affairs. Accordingly, the Property is now identified as Lot 66 in Square 3684.³

VIII. First Source Employment Agreement

Finally, the Commission requested that the Applicant submit a completed First Source Employment Agreement, which is attached at **Tab C**.⁴ As stated in the record, the Project will be financed through the Department of Housing and Community Development, which requires the Applicant to enter into a First Source Employment Agreement. *See Ex. 15.* The Applicant has proffered that it will submit an executed First Source Employment Agreement to the Zoning Administrator prior to a building permit being issued for construction of the Project. *See Ex. 42.*

Thank you for your attention to this matter and we look forward to the Commission taking final action on this application.

Sincerely,
COZEN O'CONNOR



Meridith Moldenhauer

³ During the Hearing, the Applicant mistakenly stated that the Property is Record Lot 1.

⁴ The Applicant has completed all information that is currently available and signed the First Source Agreement. Some information, including the contract number, total contract amount, and employer contract number, will not be known until later in the development process. This information will be completed prior to the issuance of a building permit for the Project, as proffered by the Applicant.

Certificate of Service

I HEREBY CERTIFY that on this 30th day of September, 2019, a copy of the Applicant's Post-Hearing Submission was served, via email, on the following:

Office of the Attorney General
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