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VIA IZIS

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

**Re: Request for a Two-Year Extension of an Approved Consolidated PUD and
Related Zoning Map Amendment
400 I Street, S.W. (Square 499, Lot 52)
Z.C. Order No. 20-12**

Dear Members of the Zoning Commission:

On behalf of Westminster Presbyterian Church and Westminster Community Partners LLC (together, the “Applicant”), this letter serves as a request for a two-year extension of the validity of Z.C. Order No. 20-12, dated December 16, 2021, and effective as of June 10, 2022 (the “Order”) (Exhibit A), applicable to property located at 400 I Street, SW (Square 499, Lot 52) (the “Property”).

Pursuant to the Order, the Zoning Commission approved a consolidated Planned Unit Development (“PUD”) with a related Zoning Map amendment from the R-3 zone to the MU-2 zone, to permit the construction of a new mixed-use building that includes a new Westminster Presbyterian Church (the “Church”) and approximately 222 new residential units. Pursuant to Decision No. D(2) of the Order, the PUD is valid for a period of two years from the effective date of the Order, within which time an application must be filed for a building permit, with construction required to commence within three years of the effective date of the Order. If approved, this extension would require that a building permit application be filed no later than June 10, 2026, with construction required to begin no later than June 10, 2027. This is the first extension request being filed for the subject PUD.

The approved project consists of two separate towers that would be provided as follows:

1. The “West Tower” would include approximately 99 residential units. If the West Tower is developed with rental units, then it is required to dedicate 8% of the residential GFA as

affordable housing for households earning up to 60% of the MFI. If the West Tower is developed with for-sale units, then it is not required to provide any affordable housing; and

2. The “East Tower” would include approximately 123 residential units entirely devoted to senior affordable housing reserved for households earning up to 60% of the median family income (“MFI”) for the first 40 years of the project. After the first 40 years, and if the West Tower is devoted to rental units, then the East Tower is required to dedicate 8% of the residential GFA as affordable housing for households earning up to 60% of the MFI. After the first 40 years, and if the West Tower is devoted to for-sale units, then the East Tower is required to dedicate 15% of the residential GFA as affordable housing for households earning up to 60% of the MFI.

The project also includes new facilities for the Westminster Presbyterian Church, which would be located on the ground floor of the East Tower, and would include a large assembly/congregation space, kitchen and dining areas, conference rooms, offices, and a community gallery and art space. The Order requires that if all three components of the project cannot be constructed concurrently, that the East Tower, which includes the senior affordable housing and the new church facilities, must be completed first. *See* Order, Decision No. A.4.

The subject application is filed pursuant to Subtitle Z § 705 of the Zoning Regulations. As required by Subtitle Z § 1600.10(c), a filing fee of \$1,500 is included with this application. Authorization letters from the Applicant are attached at Exhibit B, and a signed Application Signature Form 100 is attached at Exhibit C.

As described in detail below, the Applicant has not been able to file a building permit application for the approved project due to an inability to obtain project financing, despite its diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant’s reasonable control.

I. JURISDICTION OF THE ZONING COMMISSION

Pursuant to 11-Z DCMR § 705.2, the Zoning Commission is authorized to extend time periods of PUD orders for good cause provided the following conditions are met:

1. The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
2. 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
3. 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 Subtitle Z § 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 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

The parties to the Order were the Applicant and the affected Advisory Neighborhood Commission ("ANC") 6D. As indicated in the Certificate of Service included at the end of this letter, the Applicant served this application on ANC 6D, thus providing the required time period in which 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 in the Order. The Applicant remains fully committed to moving forward with development of the approved project and fully complying with all conditions and obligations imposed as part of the PUD approval.

C. Good Cause Shown

Pursuant to Subtitle Z § 705.2(c)(1), the Zoning Commission is authorized to grant an extension of PUD validity for projects where the applicant demonstrates with substantial evidence 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."

As set forth in the affidavit of Buwa Binitie, the Manager of Westminster Community Partners LLC (the "Affidavit") (Exhibit D), this application satisfies the criteria of Subtitle Z § 705.2(c)(1) and thus meets the requirements for extending the deadline to file a building permit application and start construction of the approved project. Continued impacts of the Covid-19 pandemic have created an inhospitable market for multi-family residential development. Indeed, obstacles associated with construction costs, inflation, interest rates, and a weak lending market have arisen nationally, which have had specific and material consequences on the Applicant's ability to secure any type of project financing and move forward with development. Accordingly, despite the Applicant's good faith efforts, it has been unable to advance the project within the timeframe prescribed by the Order due to widespread changes in economic and market conditions that are outside of the Applicant's control. These include the following:

- As indicated in the letter attached at Exhibit 1 to the Affidavit, Walker & Dunlop, which is a leading commercial real estate finance company in the United States, has reviewed the initial underwriting for the project. However, Walker & Dunlop has stated that: “While Walker & Dunlop would strongly consider committing funding for the project in the future, we are currently being extremely cautious with lending development loans of size given the uncertainty of the economy over the next 12-18 months. Although we know there have been development projects that have secured financing in the Washington, DC area, the multi-family sector continues to face mounting uncertainty. The lingering effects of the COVID-19 pandemic continues to adversely impact vacancy rates, concessions and absorption. That, coupled with uncertainty about interest rates and economic trends, are making us extremely cautious and waiting to see how the market absorbs the new supply before considering any developments of this size and nature.” Walker & Dunlop concludes: “After reviewing the initial underwriting for the project, it is our recommendation that additional time for market conditions to improve would be greatly helpful in making this a financeable and successful development for all parties.”
- Moreover, challenges to the construction industry generally have continued and have been well-documented, with insufficient labor, supply chain issues, and escalating costs, with little clarity on the future trajectory. As shown in the 2021-22 Comparative Cost Index, which tracks the true bid cost of construction (including labor, materials, contractors, overhead costs, and fees), the increase in construction costs rose by 8.81% in Washington, D.C., between October, 2021, and October, 2022, which makes it extremely difficult to estimate final development budgets for the purposes of securing construction financing. *See, e.g.*, reports issued by and based on data collected by Rider-Levett-Bucknall (RLB) and Engineering News-Record (ENR), and specifically RLB’s “Fourth Quarter 2022 North America Quarterly Construction Cost Report,” attached at Exhibit 2 to the Affidavit;
- The efforts of the Federal Reserve throughout 2022 to reduce inflation with aggressive rate hikes. This led to heightened market uncertainty, increased borrowing costs, and tightened credit, together putting downward pressure on lending activity. Indeed, the “Lending Momentum Index” created by Coldwell Banker Richard Ellis (“CBRE”) of commercial real estate loan originations declined by more than half from Q1 2022 to Q1 2023. *See, e.g.*, CBRE’s summary included in its article titled “Commercial Real Estate Lending Slowdown Continues in Q1 2023” attached at Exhibit 3 to the Affidavit; and

Despite these obstacles that have been entirely outside of the Applicant’s reasonable control, the Applicant has remained committed to making all commercially reasonable efforts to meet its obligations under the PUD, within the prevailing financing constraints. To that end, the Applicant has focused efforts on obtaining financing for the affordable housing component of the project specifically, since the Order requires that the affordable housing be built first or concurrently with the market rate housing. Accordingly, the Applicant has done the following:

- Following approval of the Order, the Applicant prepared and submitted an application for funding from the Department of Housing and Community Development (“DHCD”) to help

finance the affordable housing component of the project within the East Tower. The Request for Proposals from DHCD was originally issued on September 30, 2021, and updated on February 10, 2022. *See Exhibit 4* to the Affidavit, and a copy of the Applicant's online application at *Exhibit 5* to the Affidavit. However, as set forth in the Affidavit, the project was not selected to move forward with DHCD funding;

- The Applicant also prepared and submitted an application for funding from the Amazon Housing Equity Fund, which is intended to preserve and create affordable housing for moderate and low-income families. However, similar to above, the Applicant's request for funding was denied by Amazon on September 23, 2022. *See* email from the Amazon Housing Equity Fund declining the application at *Exhibit 6* to the Affidavit.
- On August 1, 2023, DHCD issued a another consolidated request for proposals ("RFP") to award funds for affordable housing projects. *See Exhibit 7* to the Affidavit. However, due to the Mayor's constrained funding level in FY2024 and the existing pipeline of projects that require tax-exempt bond cap allocation through 2025, the RFP focused on affordable rental projects that do not request tax-exempt bonds and 4% Low Income Housing Tax Credit ("LIHTC") structures. In other words, DHCD would only accept and review non-multifamily mortgage revenue bond/4% LIHTC rental and homeownership projects as part of its August, 2023 RFP. Accordingly, the Applicant was unable to apply for funding under this RFP because the Project requires both bond and gap financing to meet the required MFI levels established by the PUD.

Despite being unable to obtain project financing to date, the Applicant has continued to operate the Property in a productive manner. The Property is improved with the existing Westminster Presbyterian Church, which is an integral part of the Southwest community. The Church maintains the Property and existing building in good working condition, and continues to host weekly worship services, jazz and blues nights, and religious programming for children, among other activities and community services.

Based on the foregoing summary of the information provided in the Affidavit, it is clear that the Applicant has taken many steps to move forward with development of the project, even though it has been unable to secure financing and therefore file a building permit application. However, the Applicant is still fully committed to moving forward with development of the project. The Applicant has invested substantial resources in the Property over many years, including legal, architectural, engineering, permitting, and other consulting fees, such that there is no financial advantage for the Applicant not to move forward with development of the project, and has every incentive to do so as soon as feasible.

III. NO HEARING NECESSARY

Pursuant to Subtitle Z § 705.7, 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.

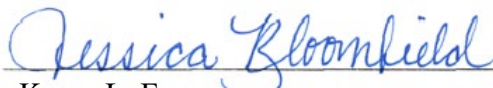
A hearing is not necessary for this request since there are not any material factual conflicts generated concerning any of the criteria set forth in Subtitle § 705.2. The only other party to the PUD was served copies of this application at the same time that it was filed with the Office of Zoning. There is no dispute that the Applicant has worked diligently to move forward with development of the Property despite being unable to file a building permit application. 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. CONCLUSION

In light of this demonstration of good cause and for the reasons stated herein, the Applicant respectfully requests that the Zoning Commission approve a two year extension of the validity of Z.C. Order No. 20-12, such that a building permit application for the project must be filed no later than June 10, 2026, with construction required to begin no later than June 10, 2027. 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: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2024, copies of the foregoing application for a PUD extension were served on the following via email.

District of Columbia Office of Planning

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Joel Lawson
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Advisory Neighborhood Commission 6D

6d@anc.dc.gov

Commissioner Andrea Pawley, ANC 6D04
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