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December 7, 2015

VIA HAND DELIVERY

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

Re: Request for Extension of Time for Z.C. Order No. 10-03 (Consolidated Planned Unit Development at Square 912, Lot 55)

Dear Members of the Zoning Commission:

On behalf of Parcel Seven Associates, LLC (the "Applicant"), the owner of Lot 55 in Square 912 (the "Property"), this letter serves as a request for a one-year extension of the time period in which to begin construction of the approved planned unit development ("PUD") on the Property. The PUD was approved pursuant to Z.C. Order No. 10-03, and extended pursuant to Z.C. Order No. 10-03A. This request, if approved, would require construction of the PUD to begin no later than January 14, 2017. Copies of Z.C. Order Nos. 10-03 and 10-03A are attached hereto as Exhibits A and B, respectively.

The request is filed pursuant to section 2408.10 of the Zoning Regulations for good cause shown as described herein. A completed application form and a check in the amount of \$520.00 made payable to the D.C. Treasurer for the requisite filing fee pursuant to section 3040.5 of the Zoning Regulations are also enclosed.

I. INTRODUCTION

A. Factual Background

Pursuant to Z.C. Order No. 10-03, the Zoning Commission granted consolidated PUD approval for the construction of a mixed-use development project composed of retail and residential uses on the Property. The order became effective upon publication in the *DC Register* on January 14, 2011, and required the Applicant to file a building permit application for the PUD no later than January 14, 2013, with construction to begin no later than January 14, 2014. Pursuant to Z.C. Order No. 10-03A, the Zoning Commission granted a two-year time extension of PUD

Order No. 10-03, which required the Applicant to file a building permit application for the PUD no later than January 14, 2015, with construction to begin no later than January 14, 2016.

The first PUD extension was granted due to the Applicant's inability to obtain project financing based on changes in economic and market conditions that were beyond the Applicant's control. Following the extension approval, and consistent with Z.C. Order No. 10-03A, the Applicant filed a building permit application for the PUD prior to January 14, 2015 in order to vest the approval. However, due to existing lease terms for the existing retailers in the Property and the regulatory process associated with procuring permits, the Applicant is unable to begin construction on the PUD by the deadline of January 14, 2016. Thus, the Applicant herein requests a one-year time extension such that construction of the PUD must begin no later than January 14, 2017.

B. Approved Project

The approved PUD is located in the C-2-B District and will be developed as a mixed-use project composed of retail and residential uses. The overall project will have a density of 5.0 floor area ratio ("FAR"), less than the maximum permitted density of 6.0 FAR under the C-2-B PUD requirements, and will include approximately 380,560 square feet of residential uses, comprised of 384 units (plus or minus 10%) and approximately 51,420 square feet of retail uses. The building will have varying heights and cornice lines and will be constructed to a maximum height of 90 feet with a maximum of eight stories. The project will have an overall lot occupancy of approximately 70%. A total of 405 off-street parking spaces will be provided in a below-grade parking garage.

C. Jurisdiction of the Zoning Commission

Section 2408.10 of the Zoning Regulations authorizes the Zoning Commission to extend the time periods set forth in Section 2408.8 (two year requirement to file a building permit application) and Section 2408.9 (three year requirement to begin construction), provided the following conditions are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
- (b) There is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the Commission's justification for approving the original PUD; and
- (c) The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in Section 2408.11.

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 Section 2408.11, as evidence of one or more of the following:

- (a) An inability to obtain sufficient project financing for the planned unit 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;

(b) An inability to secure all required governmental agency approvals for a planned unit development by the expiration date of the planned unit development order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or

(c) The existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the planned unit development order.

II. THIS EXTENSION REQUEST WAS SERVED ON ALL PARTIES

Other than the Applicant, the only party to this case was Advisory Neighborhood Commission (“ANC”) 6A. As indicated on the Proof of Service attached hereto, the Applicant has served this request for an extension of time on ANC 6A. Moreover, at its regularly scheduled, duly noticed public meeting on October 8, 2015, ANC 6A voted to support the extension application, noting that that “good cause exists for the requested extension based on the delays that the applicant has experienced in connection with terminating the leases of the current tenants on the property. The Commission continues to believe that the contemplated development will make an important and positive contribution to the revitalized H Street, N.E. corridor.” ANC 6A’s letter of support is attached hereto as Exhibit C.

III. THERE IS GOOD CAUSE FOR EXTENSION OF THE PUD VALIDITY

A. The Project Has Experienced Delay Beyond Applicant's Control

Section 2408.11(c) authorizes the grant of an extension of PUD validity for projects where a condition or factor beyond the applicant’s reasonable control renders the applicant unable to comply with the time limits of the PUD order. In this case, the Applicant is unable to begin construction by January 14, 2016, due to existing leasing obligations at the shopping center that is currently located on the Property and the timing of the regulatory permit process. As indicated in the affidavit of Gary D. Rappaport attached hereto as Exhibit D, the Applicant has worked diligently with the retailers in operation at the Property to renegotiate their existing leases and/or provide for relocation services in a manner feasible to all parties and that will enable development of the PUD. As indicated in Figure 1 included in Exhibit D, the Applicant has successfully renegotiated all but one existing lease, such that 18 out of the 19 tenants have vacated or will vacate the Property no later than December 31, 2015. As shown on Figure 1, the lease for 7-Eleven does not expire until 2020. However, the Applicant has recently been able to reach a relocation agreement with 7-Eleven, such that it will have to remove its fixtures from the Property by December 31, 2015.

Given the time and process involved in addressing the retail leases for tenants on the Property, and given that several retailers will not vacate the Property until December 31, 2015, the Applicant is unable to obtain all required raze permits to demolish the existing structures on the Property and begin construction prior to January 14, 2016. Although the Applicant has already been granted raze approvals from DDOT, Rental Accommodation, Zoning Review, Historic Preservation, and DC Water, the outstanding raze approvals cannot be obtained until the existing structures on the Property are entirely vacant, which will not occur until December 31, 2015 at the earliest, and until the Applicant completes additional required activities, such as removing all items and fixtures from the retail units and cutting off all utilities. Even after these actions are complete, the regulatory process for obtaining a raze permit can still take many months. The Applicant cannot begin construction until after the raze permit is issued and the buildings are demolished, thus necessitating the one year extension requested herein.

Since approval of Z.C. Order No. 10-03, the Applicant has worked diligently to move forward with the project, as follows:

- In the summer of 2014, the Applicant selected its residential development partner and architect, and commenced the full design process for the PUD;
- The Applicant executed a First Source Employment Agreement with the District's Department of Employment Services ("DOES");
- On September 22-24, 2014, and September 29 through October 10, 2014, respectively, the Applicant completed extensive environmental and geotechnical due diligence;
- On November 26, 2014, the Applicant submitted an initial service application to Washington Gas regarding utility distribution systems for the project. The Applicant submitted an updated application on November 11, 2015;
- On January 9, 2015, the Applicant submitted a foundation-to-grade permit application to the District Department of Regulatory Affairs ("DCRA") (Permit Tracking No. FD 1500034);
- On February 17, 2015, the Applicant submitted an initial service application to Pepco regarding utility distribution systems for the project. The Applicant submitted an updated application on October 30, 2015;
- On April 4, 2015, the Applicant conducted a Preliminary Design Review Meeting ("PDRM") with the District Department of Transportation ("DDOT");
- On July 2 and October 28, 2015, the Applicant submitted water and sewer plans to DC Water for approval (Tracking No. 15-270844);
- On August 5, 2015, the Applicant recorded the required PUD Covenant for the project (Instrument No. 2015079869);

- On September 10, 2015, the Applicant submitted its construction drawings for third party review, to which it received substantive comments;
- On September 15, 2015, the Applicant submitted an application to DDOT for public space improvements for the project (DDOT Tracking No. 116048);
- On September 17, 2015, the Applicant received a No Further Action letter from the Department of Energy and the Environment (“DOEE”), following its submission of an Environmental Impact Screening Form (EISF # 15-00616);
- On October 6, 2015, the Applicant engaged a general contractor, WCS Construction, LLC, via the issuance of an RFP for Support of Excavation and Dewatering scopes of work;
- On October 8, 2015, the Applicant presented the PUD extension request to ANC 6A, which voted unanimously (7-0) to support the application;
- On October 16, 2015, the Applicant received approved demolition plans from DC Water;
- On October 19 and 28, 2015, the Applicant submitted a response to the initial set of comments from the third party reviewer;
- On November 5, 2015, the Applicant awarded bids for support of excavation and dewatering via a Notice to Proceed sent to its general contractor, WCS Construction, LLC;
- On November 11, 2015, the Applicant engaged a general contractor, WCS Construction, LLC, via the issuance of an RFP for demolition, environmental abatement associated with demolition, rodent abatement associated with demolition, excavation, wet utility installation, and site fencing;
- On November 12, 2015, the Applicant presented a safety and security plan to ANC 6A and committed to continually work with the community as security and safety issues evolve over the life of the project;
- On November 12, 2015, the Applicant presented the public space improvements for the project to ANC 6A, which voted unanimously (6-0) to support the proposed improvements (DDOT Tracking No. 116048); and
- A DDOT Public Space Committee hearing has been preliminarily scheduled for December 17, 2015.

Despite the Applicant’s diligent, good faith efforts to move forward with the project, construction of the approved PUD cannot move forward until all leases are terminated, all structures

are completely vacant, and all raze permits have been issued. The Applicant anticipates that all of the existing retail spaces will be vacant by December 31, 2015, such that the Applicant will be able to move forward with obtaining the outstanding raze permits shortly thereafter and begin construction no later than January 14, 2017.

The Applicant is committed to moving forward with the project, as evidenced by the \$2 million that it has already invested in the Property on legal, architectural, engineering, other consulting fees, and tenant relocation.

As a result of the lengthy process that is outside of the Applicant's reasonable control, the Applicant is unable to comply with the time limits set forth in Z.C. Order No. 10-03A. Accordingly, this request for a time extension satisfies the sole criterion for good cause shown as set forth in section 2408.11(c) of the Zoning Regulations.

B. No Substantial Changes to Approved PUD

In addition to requiring the demonstration of "good cause," § 2408.10 of the Zoning Regulations requires the following:

- (b) There is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the Commission's justification for approving the original PUD ...

In this case, there has been no substantial change in any of the material facts upon which the Zoning Commission based its approval of the original PUD, and the Applicant remains committed to moving forward with developing the mixed-use project and fully complying with the conditions and obligations imposed as part of the original PUD approval. Moreover, the Applicant has support for the extension request from ANC 6A, as evidenced by the ANC's letter attached hereto as Exhibit C.

C. No Hearing is Necessary

Section 2408.12 of the Zoning Regulations provides:

The Zoning Commission shall hold a public hearing on a request for an extension of the validity of a planned unit development only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the planned unit development concerning any of the criteria set forth in § 2408.11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.

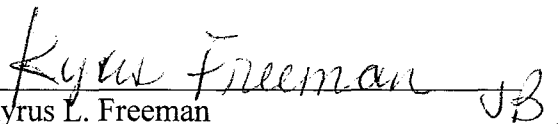
A hearing is not necessary for this request since there are no material factual conflicts generated concerning any of the criteria set forth in section 2408.11. There is no dispute that the Applicant is unable to obtain a raze permit or begin construction due the few remaining tenants that have leases at the Property until at least December 31, 2015. 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 Commission approve a one-year extension of time to begin construction for the PUD, such that construction must start no later than January 14, 2017. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP


Kyrus L. Freeman
Jessica R. Bloomfield

Attachments

cc: Jennifer Steingasser, Office of Planning (Via Hand Delivery; w/attachments)
Advisory Neighborhood Commission 6A (Via U.S. Mail; w/attachments)
Phil Toomajian, Chair, ANC 6A (Via U.S. Mail; w/ attachments)

PROOF OF SERVICE

I hereby certify that on Dec. 7, 2015, a copy of the foregoing Applicant's Request for Extension of Time was served by first class mail on the following at the address stated below:

Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington DC 20013

Kyrus Freeman JB.
Kyrus L. Freeman