

# Holland & Knight

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September 25, 2014

## VIA HAND DELIVERY

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

RECEIVED  
D.C. OFFICE OF ZONING  
2014 SEP 25 PM 2:40

**Re: Request for Extension of Time to File Building Permit For 250 M Street, S.E.  
Zoning Commission Order No. 03-12K/03-13K**

Dear Members of the Zoning Commission:

On behalf of Square 769, LLC and the District of Columbia Housing Authority ("DCHA") (collectively the "Applicant"), this letter serves as a request for a two-year extension of the time period in which to file a building permit for the construction of an office building at 250 M Street, S.E., which was preliminary approved in Zoning Commission Order No. 03-12/03-13, received second stage approval pursuant to Order No. 03-12C2/03-13C2, was modified pursuant to Order No. 03-12F/03-13F, and was extended pursuant to Order Nos. 03-12K/03-13K and 03-12N/03-13N. This request, if approved, would require that an application for a building permit for the approved office building must be filed no later than September 26, 2016, and construction must be started no later than September 26, 2017. A copy of the most recent order granting an extension (Order No. 03-12N/03-13N) is attached as Exhibit A.

This request is filed pursuant to Section 2408.10 of the Zoning Regulations for good cause shown herein. Completed application forms for the extension are submitted herewith, 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 is also enclosed.

## I. INTRODUCTION

### A. Factual Background

On March 21, 2003, the Applicant filed applications seeking preliminary and consolidated approval of a PUD for property located in the southeast quadrant of Washington, D.C. and generally bounded by Virginia Avenue on the north, 7<sup>th</sup> Street on the east, M Street on

ZONING COMMISSION  
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District of Columbia  
NO. 03-12S/03-13S  
CASE NO. 03-12S/03-13S  
EXHIBIT NO. 1

the south, and 2<sup>nd</sup> Street on the west. The property consists of approximately 927,000 square feet of land area.

Pursuant to Order No. 03-12/03-13, the Zoning Commission granted preliminary and consolidated approval for the overall development, including the preliminary approval for an office building to be constructed at 250 M Street, S.E. on the southern portion of Square 769. On May 14, 2007, the Commission approved Case No. 03-12C/03-13C, granting second-stage approval of the office building. Pursuant to Order No. 03-12F/03-13F, which became final and effective on September 26, 2008, the Zoning Commission approved a modification to its second-stage approval of the office building at 250 M Street. The Zoning Commission extended approval of the modified building pursuant to Order Nos. 03-12K/03-13K and 03-12N/03-13N, such that the Applicant must file a building permit application for the office building no later than September 26, 2014, with construction to begin no later than September 26, 2015. A copy of Order No. 03-12N/03-13N, the most recent order affecting the office building, is attached hereto as Exhibit A.

The approved office building that is the subject of the current application will include a total gross floor area of approximately 234,182 square feet and will be constructed to a maximum height of 130 feet, not including roof structures. As indicated in the letter from the Applicant, attached hereto as Exhibit B, the Applicant is fully committed to building in the Capitol Riverfront area, as evidenced by the Applicant's other nearby projects that include construction of over 1,100 new residential units and significant retail opportunities<sup>1</sup>. The Applicant recognizes that the area is in danger of being overbuilt with residential uses and is therefore committed to building 250 M Street for office use. However, as discussed in more detail below, the Applicant is requesting a two-year time extension based upon unexpected delays and market conditions beyond the Applicant's control.

## **B. 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:

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<sup>1</sup> The Applicant has taken a number of steps since approval of the office building necessary to support development of the site, including: (a) consolidated the prior existing lots into new, assessment and taxation lots; (b) completed construction documents for the office building, which documents have been filed and approved by a 3<sup>rd</sup> party permit reviewer; (c) submitted plans to DC WASA for review and approval; (d) rebranded the office building to "250 M at Canal Park" for marketing purposes; (e) participated in broker tours and project presentations to market the approved office building; (f) responded to several Request for Proposals for major tenants; (g) completed and submitted an Environmental Impact Screening Form (EISF) for the project, which was approved; (h) undertook substantial infrastructure work along 2<sup>nd</sup> Place related to the construction of Canal Park, which infrastructure improvements will serve the future improvements at the site of the office building; and (i) because a portion of the site was a former Shell gas station, Shell's environmental consultant, Groundwater Environmental Services ("GES"), submitted a Corrective Action Plan and Health and Safety Plan, which plan was approved by the D.C. Department of the Environment and GES continues to monitor the wells by conducting on-site testing of groundwater and soil.

- (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 §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 6D ("ANC 6D"). As indicated on the Proof of Service attached hereto, the Applicant has served this request for an extension of time on ANC 6D.

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

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

Section 2408.11(a) authorizes the grant of an extension of PUD validity for projects confronting difficulties with financing based upon changes in economic and market conditions beyond an applicant's control. The Zoning Commission has recognized in approving other extension requests that the Washington real estate market has been subject to, and continues to suffer from, severe financing, construction, and leasing impediments. Office leasing in the region remains particularly depressed as government contractors, law firms, and federal agencies

are still reluctant to commit to long term space decisions. As set forth in the letter from the Applicant's mortgage broker attached as Exhibit C, uncertainty in the office market has resulted in difficulty finding a lender to provide construction and permanent take-out financing for an office building without a major tenant. The Applicant's mortgage broker has discussed financing opportunities with several lenders, including Wells Fargo, BB&T Bank, Bank of America, and SunTrust. However, no lender is interested in financing an office building "on-spec" and lenders are only committing funding for buildings that are at least 70% pre-leased.

The Applicant has also continued to actively market the approved office building to potential tenants through industry events, brochures, a detailed website, and other marketing materials and engagements. As set forth in the letter from the Applicant's leasing broker, the Smith Sales & Leasing Group of William C. Smith (the "Leasing Group"), attached hereto as Exhibit D, the Applicant has worked diligently to find one or more lead office tenant(s) willing to pre-lease 70% of the office component of the building (approximately 150,000 square feet). The Leasing Group has monitored and aggressively competed in all appropriate public and private leasing solicitations and anticipates significant leasing opportunities in the future, with approximately 33.6 million square feet of government leasing coming to the National Capitol region by 2018. The Leasing Group has hosted numerous brokerage events and symposiums to create interest in the project, including luncheons with top tenant representative leasing brokers to highlight the benefits of locating offices at the Capitol Riverfront and to promote first class office leasing opportunities at 250 M Street. Furthermore, the Leasing Group has promoted the project with its existing tenant base within Capitol Riverfront and has coordinated with the brokerage community and the Capitol Riverfront Business Improvement District ("BID") to stay abreast of any large potential tenants.

Despite the Applicant's efforts, spending cuts at the federal level and the weak office market in general have made it difficult for federal contractors and private interests alike to make any firm commitments to leasing the office building. However, the vibrancy, diversity, demographics, improving amenity base, and growing population of the Capitol Riverfront have made the area more attractive to all types of potential tenants, including federal agencies, non-profit organizations, and private interests. As indicated in Exhibit D, the Leasing Group believes that approval of a two-year extension will enable it to execute a lease with an anchor tenant in the near future, allowing the project to move forward.

The Applicant has also worked with the Capitol Riverfront BID to host brokerage events to create interest in the building and the Capitol Riverfront neighborhood in general. As indicated in the letter from the Capitol Riverfront BID, attached as Exhibit E, the BID has been working since 2007 to create a vibrant, economically strong neighborhood with a complementary mix of uses. The BID recognizes the need to maintain a balance of residential and office uses in order to have a high-quality, mixed-use area that serves residents, workers, and visitors. The BID notes the importance of 250 M Street becoming an office building, due to its central location and the high proportion of residential units coming on line in the area. The Applicant has presented the project to numerous leads, including non-profits, engineering firms, educational institutions, and government and quasi-government prospects; however, to date, any potential tenants have chosen to lease space in existing buildings that can provide for more immediate occupancy. Despite the stagnant market, the BID, the Applicant, and the Applicant's mortgage and leasing brokers believe that the office market will improve in the near future and

look forward to seeing the building at 250 M Street completed and contributing to the local and regional economy.

In addition to the Applicant's direct efforts to obtain project financing, there is substantial evidence indicating the challenging economic and market conditions for office buildings in the D.C. region. According to an "Office Insight" report attached hereto as Exhibit F and published by Jones Lang LaSalle tracking activity in the office market during the first quarter of 2014, the metropolitan Washington, D.C. economy followed a "two steps forward, one step back" path. Although the area experienced rapid recovery in 2010, it languished in recent years as political gridlock and calls to rein in government spending softened tenant demand. According to the report, near-term challenges remain an impediment to progress. Given limited space requirements and high vacancy rates, attracting new prospects and retaining existing tenants has required aggressive action, particularly in the bottoming D.C. market. Furthermore, speculative construction has slowed considerably and sublease inventory has fallen from recent peaks.

Moreover, as set forth in a recent report attached hereto as Exhibit G and issued by Newmark Grubb Knight Frank tracking the D.C. office market in the second quarter of 2014, market conditions remain in tenants' favor as overall demand growth posted weak results while tenants across all industries downsized their real estate needs. The report notes that government and business services remain the largest employment industries in the D.C. region, especially in downtown D.C.; however, both sectors are looking to downsize their office space needs by almost 30 percent. As set forth in the report, overall leasing market fundamentals remained weak at mid-year and the office vacancy rate increased. As indicated on page 6 of the report, the Capitol Riverfront area had the highest vacancy rate among all other Washington, D.C. submarkets, with negative net absorption in the second quarter. Furthermore, nearly 60 percent of the largest 25 leases signed during the second quarter were renewals in existing buildings, resulting in reduced demand for new office space throughout the District.

Based on the foregoing, the approved office building cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of weak economic and market conditions beyond the Applicant's control. Nevertheless, the recovery is expected to continue, with District of Columbia among the leading markets in the country. Therefore, this request for extension satisfies the sole criterion for good cause shown as set forth in Section 2408.11(a) 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 ...

The extension is requested in order to enable the Applicant to continue its diligent efforts to secure the necessary project financing and tenants. There has been no substantial change in

any of the material facts upon which the Zoning Commission based its approval of the office building, and the Applicant remains committed to moving forward with the project and fully complying with the conditions and obligations imposed as part of the PUD approval.

**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.

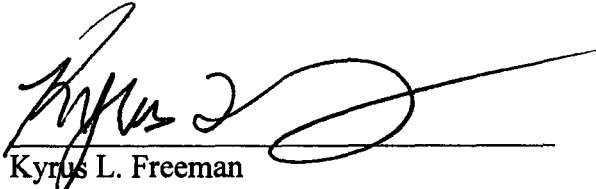
A hearing is not necessary for this request since there are no material factual conflicts generated concerning any of the criteria set forth in Section 2408.11. There is no dispute that: (1) the Applicant has been unable to secure the necessary project financing for the project at this time, (2) there are significant impediments in the market place to proceeding with the project at this time, and (3) the Applicant has not yet been able to secure a tenant or tenants for the office building. 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 two-year extension of time to file a building permit for the office building at 250 M Street, S.E., such that an application must be filed for a building permit no later than September 26, 2016, and construction must start no later than September 26, 2017. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "Kyrus L. Freeman", is written over a horizontal line. The signature is stylized and cursive.

Kyrus L. Freeman  
Jessica R. Bloomfield\*

Attachments

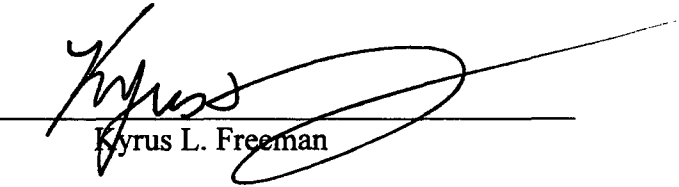
cc: Jennifer Steingasser, Office of Planning (Via Hand Delivery; w/attachments)

\* Admitted in Pennsylvania, practicing in D C pursuant to D C. Court of Appeals Rule 49(c)(8)

**PROOF OF SERVICE**

I hereby certify that on September 25, 2014, 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 6D  
1101 4th Street SW  
Washington, DC 20024



Kyrus L. Freeman