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November 16, 2018

VIA IZIS AND HAND DELIVERY

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

**Re: Z.C. Case No. 18-03 – Applicant’s Post-Hearing Submission
Consolidated PUD and Related Map Amendment
4611-4615 41st Street, NW (Square 1769, Lots 1 and 2)**

Dear Members of the Commission:

On behalf of Dancing Crab Properties, LLC (the “Applicant”), we hereby submit the following materials and information as requested by the Zoning Commission at its October 29, 2018 public hearing.

I. Updated Architectural Plans and Elevations

Attached hereto as Exhibit A is the updated and final set of Architectural Plans and Elevations (“Plans”) approved as part of this application. The Plans depict the enhanced public space improvements negotiated with Advisory Neighborhood Commission (“ANC”) 3E as part of the Applicant’s public benefits and amenities package. No other changes were made to the Plans compared to the plans filed on September 7, 2018 (Ex. 19A).

II. Inclusionary Zoning (“IZ”) Proffer

At the public hearing and in written testimony Ms. Marilyn Simon alleged that the Applicant incorrectly calculated the matter-of-right IZ requirement for the Project for purposes of determining the IZ square footage that should be counted towards the Applicant’s IZ proffer consistent with 11-X DCMR § 305.5(f), which provides that public benefits include “[h]ousing that [e]xceeds the amount that would have been required through matter-of-right development under existing zoning.”

According to Ms. Simon, the Zoning Regulations do not define an IZ set-aside requirement when more than half of proposed residential units are not within steel and concrete construction

and the project is in a zone with a matter of right height of more than 50 feet. *See* 11-X DCMR § 1003.1 and 1003.2. Ms. Simon claimed that under the Site’s proposed MU-5-B zone, the Project would be subject to the IZ set-aside requirement of 11-X DCMR § 1003.1 (10% of the residential gross floor area (“GFA”) or 75% of the achievable bonus density).

Following the public hearing, Ms. Simon submitted a second filing regarding the Applicant’s affordable housing proffer (Ex. 40), which stated that (i) the Applicant relied on the proposed IZ regulations (Z.C. Case No. 04-33I) rather than the current IZ regulations to calculate the matter-of-right IZ requirements for the Project, (ii) the Applicant should use the current IZ regulations for the MU-5-B District, which do not permit the Project to take advantage of the “reduced” IZ requirement of 11-X DCMR § 1003.2 (8% of the residential GFA or 50% of the achievable bonus density); and (iii) the Project is required to provide either 3,774.275 square feet or 2,539.57 square feet dedicated to IZ units.

The Applicant’s IZ calculations (Ex. 34) are fully consistent with how the IZ requirements have been consistently calculated. The Applicant calculated the IZ requirements for the project based on (i) the matter-of-right requirements under the existing MU-4 zone (2,746.03 square feet); (ii) the matter-of-right requirements under the proposed MU-5-B zone (2,539.57 square feet); and (iii) the PUD requirements under the proposed MU-5-B zone (3,882 square feet). *See* Ex. 34 for calculations. Under the MU-4 scenario, 11-C DCMR § 1003.1 applies because the project would (i) not be Type I construction and (ii) the by-right height limit in MU-4 is 50 feet. Under the MU-5-B scenario, 11-C DCMR § 1003.2 applies because the project does not fall into both requirements of C-1003.1 (not Type I construction and not a by-right height limit of 50 feet).

The Applicant correctly compared the proposed IZ proffer to the MU-4 scenario, since MU-4 is the matter-of-right zone used to determine the amount of affordable housing that “exceeds the amount that would have been required through matter-of-right development under existing zoning.” 11-X DCMR § 305.5(f) (emphasis added). At the public hearing, OP agreed, stating that it reviewed the Applicant’s IZ calculations with its housing specialist at DHCD who “agreed with the numbers from the Applicant.” *See* October 29, 2018 Public Hearing Transcript (“Tr.”), p. 41.

Moreover, the Office of Planning’s (“OP”) post-hearing report accurately indicates:

- Under the existing MU-4 zone, the matter-of-right IZ requirement would be 2,746.03 square feet (10% of the bonus density), including IZ generated by the penthouse;
- The Applicant is proposing to provide 3,882 square feet of IZ in the Project;
- Thus, 1,136 square feet of IZ would constitute the public benefit according to 11-X DCMR § 305.5(f) (3,882 sf provided – 2,746.03 sf required = 1,136 sf difference);
- OP confirmed at the public hearing and in its supplemental report that “**the [A]pplicant’s use of the IZ set aside percentages is correct and consistent with intent and practice.**” *See* Ex. 38, p. 1.

The project applies the current IZ regulations as they have been consistently interpreted and applied in other cases. This was confirmed by OP in stating that the current IZ regulations are “being clarified in 04-33I *to reflect the original intent and practice* of the requirements.” *Id.* Thus, despite Ms. Simon’s testimony to the contrary, the proposed IZ regulations simply confirm and codify the intent and current practice of the current regulations.

Even assuming that Ms. Simon’s calculations are correct, the Project is providing more square footage devoted to IZ units than would be required by the current regulations since the Applicant is providing 3,882 sf dedicated to IZ units. Indeed, Ms. Simon does not dispute that the Applicant is providing more IZ than is required. At the public hearing, OP agreed with this, finding that “the application does comply with the zoning regulations and it does exceed the zoning regulations.” *See* Tr., p. 41.

In addition to providing more IZ square footage than required, the project includes significantly more square footage devoted to IZ units at 50% of the Median Family Income (“MFI”) than would be required under the Zoning Regulations (140.32 sf provided and 992 sf proposed, which is 851 sf more than required). At the request of the ANC, the project also specifically designates the largest units in the project to IZ units to accommodate families. Thus, the affordable housing proffer in this case is more than just a comparison of matter-of-right GFA to proposed GFA. Thus, the Applicant’s affordable housing proffer is consistent with 11-X DCMR § 305.5(f).

Finally, the Applicant notes that affordable housing is just one of the many public benefits and project amenities proffered as part of this application. The benefits and amenities package was fully vetted, prepared in consultation with, and supported by the ANC, and the Applicant was always clear about the amount of IZ square footages, number of units, size, and subsidy levels being provided. Therefore, the Applicant believes that its proposed IZ proffer constitutes a significant benefit as part of this project.

III. Residential Parking Permit (“RPP”) Restriction

Ms. Simon’s testimony requested that the Applicant modify its proposed condition that restricts residents of the Project from obtaining an RPP permit. The Applicant’s proffer, which is restated below, is fully consistent with the language specifically requested by the ANC and set forth in the signed Memorandum of Understanding between the Applicant and the ANC (Ex. 28). Moreover, the language is consistent with RPP restrictions included for other approved projects. *See, e.g.* Z.C. Order Nos. 16-26, 14-14, 16-10, and 10-23. Therefore, the Applicant declines to accept Ms. Simon’s proposed changes. The Applicant’s proposed language is as follows:

“For the life of the Project, the Applicant shall ... “[r]estrict residents of the Project from obtaining an RPP by (i) placing a clause in emphasized type in all residential leases that prohibits residents from applying for or obtaining RPPs, or using an RPP guest pass within one mile of the Site, upon penalty of mandatory lease termination to the full extent permitted by law; and (ii) obtaining written authorization from each tenant through a required lease provision that allows the DMV to release to the Applicant every 12 months any and all records of that tenant requesting or receiving an RPP for the Site. The Applicant shall take all reasonable steps to obtain and review

such records for noncompliance with such lease provisions. The Applicant shall also (i) oppose any effort by Project residents or others to add the Site to the list of properties eligible for RPPs; and (ii) if the Applicant sells any unit(s) at the Project, the Applicant shall add a covenant that runs with the land to the deed for the unit(s) prohibiting residents from applying for or obtaining RPPs.”

The language above is included in the Applicant’s draft Findings of Fact and Conclusions of Law and has already been reviewed and approved by OAG as part of the Commission’s procedures set forth in 11-X DCMR § 308.8 *et seq.*

Moreover, the project is fully compliant with the off-street parking requirements of the Zoning Regulations such that zoning relief was not needed or requested as part of this application. In reviewing the proposal, DDOT stated that the Project “likely will not generate [] many peak hour vehicle trips due to the low parking ratio,” and found that the “proposed parking ratio is very low and is consistent with DDOT’s approach to encouraging non-automotive travel, discouraging automobile ownership, and minimizing traffic congestion in the District.” *See* Exhibit 21, p. 2. Similarly, the ANC stated that the “primary potential harms associated with development of this scope are traffic increases and parking shortages. Here, the Applicant’s traffic study reasonably predicts the Project will generate few additional car trips during peak periods.” *See* Exhibit 28A, p. 1.

IV. Draft Findings of Fact and Conclusions of Law

Finally, as requested by the Commission at the public hearing, attached hereto as Exhibit B is a draft copy of the Applicant’s proposed Findings of Fact and Conclusions of Law.

Sincerely,

HOLLAND & KNIGHT LLP

By: 
Kyrus L. Freeman
Jessica R. Bloomfield

cc: Joel Lawson, D.C. Office of Planning (*see* Certificate of Service)
Crystal Myers, D.C. Office of Planning (via Email)
Aaron Zimmerman, DDOT (via Email)
Advisory Neighborhood Commission 3E (*see* Certificate of Service)
Commissioner Greg Ehrhardt, ANC 3E01 (via email)
Commissioner Jonathan Bender, ANC 3E Chair (via email)

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2018, a copy of the Applicant's post-hearing submission was served on the following via email, with hard copies sent on November 19, 2018.

Mr. Joel Lawson
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VIA EMAIL AND HAND DELIVERY

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