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November 26, 2018

VIA EMAIL AND FIRST CLASS MAIL

John Trefethen, Chair
Zoning Board of Appeals
Town of Ashland
101 Main Street
Ashland, MA 01721

Re: RHW Development, LLC - Robert Hill Way Senior Apartment Development –
Request to Extend Comprehensive Permit as Insubstantial Change

Dear Chairman Trefethen and Members of the Board:

On behalf of RHW Development, LLC (the “Applicant”), please accept this letter requesting an extension of the Modification of Comprehensive Permit issued by the Zoning Board of Appeals (“ZBA”) on October 28, 2013. The Applicant seeks a one-year extension through December 18, 2019. The Applicant further seeks that such action be taken by the ZBA as an insubstantial change pursuant to the Chapter 40B regulations, 760 CMR 56.00 et seq.

Relevant Chronology

The ZBA granted the Modification of Comprehensive Permit on October 28, 2013 (the “Comprehensive Permit”). The Comprehensive Permit was recorded with the Town Clerk on October 30, 2013.

On November 19, 2013, the Town Clerk received an appeal of the Comprehensive Permit, filed in the Middlesex Superior Court (the “Laquidara Litigation”). In May 2015, the Middlesex Superior Court ruled in the Applicant’s favor on a Motion for Summary Judgment, finding that the plaintiffs in the Laquidara litigation lacked standing. The plaintiffs filed a Motion for Reconsideration, which was denied.

The plaintiffs then appealed to the Massachusetts Appeals Court. The Appeals Court referred to the case using a different plaintiff’s name as the lead name (i.e., Swati Arvind). In December 2015, the appellants/plaintiffs agreed to dismiss the Appeals Court litigation, with prejudice. A Stipulation of Dismissal was filed with the Appeals Court and the Appeals Court dismissed the case on December 18, 2015. Thus, the effective date of the Comprehensive Permit was December 18, 2015. See 760 CMR 56.05(12)(c); M.G.L. Chapter 40A, Section 11.

Need for Extension of Comprehensive Permit

Pursuant to 760 CMR 56.05(12)(c), a Comprehensive Permit shall lapse three years from the date on which the permit becomes final. The Applicant seeks a one-year extension, through December 18, 2019, to commence construction.

The financing for the Robert Hill Way Senior Apartment Development relies on the award of funding from the Commonwealth of Massachusetts Department of Housing and Community Development (“DHCD”) in the form of low-income housing tax credits. The Applicant applied numerous times to DHCD beginning shortly after the October 2013 issuance of the Comprehensive Permit; however, due to the Laquidara litigation and subsequent Appeals Court litigation, the Applicant did not receive an award of tax credits. Finally, on August 24, 2018, DHCD awarded the Applicant the tax credits. This award is the first step in compiling the financing for the construction of the project. The Applicant is amassing the various other sources of financing and expects to close on the construction loan in April or May of 2019. Construction will commence shortly after the construction loan closing.

Request for Extension as Insubstantial Change

Chapter 40B and its regulations permit applicants to seek changes after the issuance of a Comprehensive Permit. If the Zoning Board determines that a change is substantial, the Zoning Board must hold a hearing. If the change is determined to be insubstantial, the Comprehensive Permit “shall be deemed modified to incorporate the Change.” 760 CMR 56.05(11)(b).

The Applicant requests an extension of the Comprehensive Permit for one year, through December 18, 2019. This request is clearly an insubstantial change to the Comprehensive Permit. The Comprehensive Permit regulations clearly state that “Extension of a permit shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4).” 760 CMR 56.05(12)(c).

We look forward to meeting with the Board on December 11, 2018 to review the request for extension. Thank you very much for your ongoing time and attention to this project.

Sincerely,



Ruth H. Silman

cc: Amanda Molina Dumas, Town of Ashland
Adam Costa, Esq.,
RHW Development, LLC