

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**



September 19, 2011

Via PDF and US Mail

Steven E. Sher
Director of Zoning and Land Use Services
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W. - Suite 100
Washington, D.C. 20006

Re: Art Place PUD - Building A - PUD No. 06-10

Dear Mr. Sher:

This is to confirm the substance of our discussion on Tuesday, August 9, 2011, with Barry Habib of Shalom Baranes Associates, concerning the development of the above-referenced property. The Arts Place project is located on the west side of South Dakota Avenue, N.E., in the vicinity of the Fort Totten Metrorail station. The project consists of a multi-phase project including residential, retail, arts and civic uses.

The property is zoned C-2-B and FT/C-2-B and is the subject of a planned unit development (PUD). By Order No. 06-10, dated December 14, 2009, effective January 15, 2010, the Zoning Commission approved a preliminary PUD for the entire site and granted consolidated approval to the first phase, known as Building A. Building A is located in the block bounded by South Dakota Avenue, Galloway Street and the relocated Ingraham Street.

The ZC order contains a condition (No. 24) which is standard in most PUD Orders:

The consolidated PUD approved by the Commission shall be valid for a period of two years from the effective date of this order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction of Building A shall begin within three years of the effective date of this Order.

This order reflects the provisions of 2408.8 ("The final PUD approved by the Commission shall be valid for a period of two (2) years, within which time application shall be filed for a building permit, as specified in § 2409.1.")

Since the Zoning Regulations do not define what constitutes a "building permit," I have had occasion to consider that issue with respect to other projects. Building permits are authorized by the Construction Code and specifically are as set forth in Section 105A of the D.C. Supplement (12 DCMR) to the International Building Code. Section 105.1.4 lists all of the

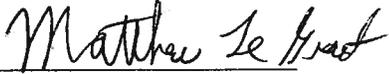
various categories of Building Permits, including in paragraph 1, "New construction, including constructing, adding to or moving a building or structure." Since for many projects, permits are issued in phases, it is common for a project to obtain a separate excavation, sheeting and shoring permit, a foundation to grade permit, then the main permit for the above-ground construction and then further permits for tenant improvement work. Excavation and sheeting and shoring permits are listed as "Specialty Permits" under §105.1.11, which is a different section of the Code from Building Permits, and I have therefore determined that those permits are not building permits as that term is used in the Construction Code and the Zoning Regulations. Since a foundation to grade permit is one which authorizes new construction, I have previously concluded that such a permit is a building permit within the meaning of the Zoning Regulations.

You advised that the Applicant intends to submit an application for a foundation to grade permit before the end of the time specified in Order No. 06-10, that is, before January 15, 2012. The Plans will show the proposed construction, including piles, footings, floors, columns and walls, up to the level of the grade, recognizing that the site slopes up from east to west by approximately twenty feet. The transfer slab that forms the roof of the garage will be submitted in a subsequent permit. The plans will show the extent of the excavation required. A separate permit for excavation, sheeting and shoring, noted above as a Supplemental Permit, will be filed later, after an excavation sub-contractor has been selected for the project.

The preparation of these plans, and the work to be undertaken pursuant to them, is a substantial undertaking by the Applicant. These plans will cover all of the foundation work below the surrounding grade necessary for Building A. The value of the work to be undertaken, together with the related utility work in public space (which will require separate public space permits) will be approximately \$9 million, which represents approximately 10% of the total construction cost of Building A.

I conclude that, if you file an application for a foundation to grade permit with the necessary supporting plans and documentation and pay the required fee by January 15, 2012, you will have met the requirements of the Regulations to vest the Zoning Commission's approval as set forth in Order No. 06-10. Note further that under §2408.9, "Construction shall start within three (3) years of the date of final approval," or by January 15, 2013.

Please let me know if I may be of further assistance.

Sincerely, 
Matthew Le Grant
Zoning Administrator