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Mr. Josh Tzucker, Chair
and Members of the Howard County Planning Board
Howard County Planning & Zoning
3430 Courthouse Drive
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Attn: Valdis Lazdins

Re: Downtown Columbia CEPPA 12 (Multi-Use Pathway)

On behalf of Parcel C Property LLC, a joint venture between Kettler and Howard Hughes Corporation (“Petitioner”), the purpose of this letter is to request a modification of CEPPA 12 for the completion of the multiuse pathway serving Downtown Columbia. As discussed below, a decision to start construction of the next two buildings in the Warfield Neighborhood depends on the Planning Board’s favorable consideration of this request. We would therefore appreciate the Planning Board considering this request as soon as possible.

Background

At its meeting on November 20, 2014, the Planning Board approved SDP-13-020 for Phases II-IV of the Multi-Use pathway, excluding the Rt. 29 crossing (“Pathway”). That same evening, the Planning Board approved SDP-14-024 for Parcels C-1 and C-2 within the Warfield Neighborhood. In connection with its consideration of SDP-14-024, the Planning Board also considered a request to modify the timing of CEPPA 12 since it was taking considerably longer than anticipated to obtain and document the easements needed for the construction and maintenance of the Pathway.

The Planning Board modified CEPPA 12 as follows:

“1. Prior to Planning Board approval of a site development plan for the 500,000th SF of development under the Downtown Revitalization provisions, the Planning Board must have approved the site development plan for all phases of the multiuse pathway extending from Howard County General Hospital to Blandair Park excluding *completion of the design and construction work* for the Rt. 29 crossing, for which the Howard Hughes Corporation will pay the County, *prior to the issuance of the building permit for SDP-14-024*, \$500,000 in cash to be used to improve the appearance and safety of the MD 29 pedestrian bridge.

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2. Prior to issuance of a building permit for the 500,000th SF of development under the Downtown Revitalization provisions, grading permit(s) must have been issued for all pathway segments. Grading permit(s) may be issued upon signature of the approved site development plan.
3. Prior to issuance of an occupancy permit for the 500,000th SF of development under the Downtown Revitalization provisions, the entire pathway must be completed. *If the Howard Hughes Corporation finds there are significant delays due to failure to obtain easements for a particular property or other extraordinary complication, the Planning Board will reconsider alternative timing for the completion of the Multi-Use Path.*”

Following approval of the Pathway SDP (SDP-13-020), an abutting property owner filed an appeal challenging the Board’s approval. HRD and the County successfully defended the approval before the Board of Appeals Hearing Examiner (BA Case No. 712-D). However, the property owner filed a second appeal to the Board of Appeals. That appeal is still pending. Significantly, following a decision by the Board of Appeals, additional appeals could potentially be filed with the Howard County Circuit Court and then the Maryland Courts of Appeals, potentially delaying a final decision on the Pathway approval for as long as 18-24 months.

Construction and Occupancy of Parcels C-1 and C-2

SDP-14-024 approved Parcels C-1 and C-2 for 437 total dwelling units and 27,025 total sf of retail/restaurant space. Petitioner would like to pull its building permit for construction on Parcels C-1 and C-2 in September/October 2015. To that end, construction drawings have been submitted to DPZ and are under review.

Importantly, until the Pathway appeal is finally decided, the ability to complete the Pathway and have it remain as constructed is uncertain. As a consequence, the corresponding ability to satisfy CEPPA 12 and thereby obtain an occupancy permit for Parcels C-1 and C-2 is also uncertain. Under these circumstances, Petitioner and its investment partners have determined there is simply too much risk to finance construction of the two buildings without knowing they can be occupied once construction is completed.

Status of the Pathway

All phases of the Pathway have now received SDP approval, although the above-referenced appeal is pending. All easements required for Phases I, II, III and IV have been obtained and

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provided to the County. All development agreements have been executed, and 100% of the required bonds have been posted with the County. Final SDP mylars have been submitted and are awaiting signature by the Planning Director.

Phase I of the Pathway (adjacent to Symphony Woods) has been completed. HRD began construction of Phase II (between Howard General Hospital and Symphony Woods) this Spring. Construction on Phases III and IV (east of Symphony Woods to Blandair Park) will occur late Summer and Fall 2015.

HRD has previously stated and through Petitioner here reiterates its commitment to completing the Pathway as expeditiously as possible. HRD is also prepared to post a \$500,000 bond with the County to fund improvements to the existing pedestrian bridge over Rt. 29, thus completing its obligations with respect to the Pathway and Rt. 29 crossing.¹

Proposed Alternative to CEPPA 12

As noted above, the Planning Board's modification of CEPPA 12 contained the following provision: *"If the Howard Hughes Corporation finds there are significant delays due to failure to obtain easements for a particular property or other extraordinary complication, the Planning Board will reconsider alternative timing for the completion of the Multi-Use Path."* In this regard, the filing and continued prosecution of the Pathway appeal creates an extraordinary complication in the completion of the Pathway, particularly with respect to its impact on the ability of Petitioner to occupy Parcels C-1 and C-2.

The timely development of Parcels C-1 and C-2 will build on the excitement and momentum created by the recent completion of The Metropolitan and West Promenade. In particular, the construction of these two buildings will complete development along the western edge of Columbia Mall Circle and the extension of Twin Rivers Road as a pedestrian-oriented connection west of Downtown. Unquestionably, the development of Parcels C-1 and C-2 will be a significant step in transforming the Warfield Neighborhood into the mixed-use urban environment envisioned by the Downtown Columbia Plan and should not be delayed.

¹ The original CEPPA 12 indicated either security or cash could be posted for improvements to the existing bridge. Since the nature and timing of the improvements have not yet been identified and this effort may also involve a capital project, HRD proposes to post a bond prior to issuance of a building permit for 500,000 sf to secure its obligation as permitted by the original CEPPA.

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Accordingly, to satisfy CEPPA 12 Petitioner respectfully requests the Planning Board require the posting of security to cover the cost of CEPPA 12 as follows:

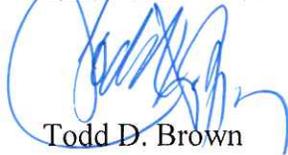
“Prior to the issuance of a building permit for 500,000 SF of development under the Downtown Revitalization provisions (i) the final SDP mylars for all segments of the Pathway, excluding the Rt. 29 crossing, must be signed; (ii) security for the construction of all segments of the Pathway, excluding the Rt. 29 crossing, in accordance with the signed SDP must be posted with the County; and (iii) security must be posted with the County in the amount of \$500,000 to be used exclusively by the County for improvements to the existing pedestrian bridge over Rt. 29.”

We note Section 125.0.A.9.h of the Zoning Regulations authorizes the Planning Board to require a petitioner to post security with the County in an amount sufficient to cover the cost of an original CEPPA if that CEPPA cannot be provided because factors exist that are beyond the reasonable control of the petitioner. The filing and continued prosecution of the Pathway appeal is undoubtedly beyond the control of Petitioner. The disruption caused by this appeal not only affects HRD’s ability to complete the Pathway with certainty but most significantly affects the ability to obtain construction financing for any development, including but not limited to Parcels C-1 and C-2, since occupancy depends on the completion of the Pathway. For this reason, the Planning Board should allow CEPPA 12 to be satisfied by the posting of appropriate security with the County as described above.

Thank you for your consideration.

Sincerely,

LINOWES AND BLOCHER LLP



Todd D. Brown

Cc: Mr. Kevin Peterkin
Mr. Robert Jenkins
Mr. Mark Thompson