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December 9, 2019

Nadine Marrero
Director of Planning/Zoning Administrator
65 Niagara Street, Room 901
Buffalo, NY 14202

Re: New Queen City Landing Project at 975/1005 Fuhrmann Blvd.

Dear Ms. Marrero:

I am writing to you in your capacity as Zoning Administrator on behalf of myself and my clients, Margaret Wooster, Jay Burney, Lynda K. Stephens and James E. Carr.

Pursuant to Section 11.1.2D(2)(a) of the Uniform Development Ordinance (UDO), one of your duties as the City of Buffalo's Zoning Administrator is to receive applications and review them for completeness for all matters decided by the City Planning Board and Zoning Board of Appeals (ZBA). It is my understanding, based on a November 25, 2019 conversation with Office of Strategic Planning's Brandon Baxter, that your office has received and is reviewing for completeness an application submitted on behalf of Queen City Landing, LLC, ("QCL") regarding a proposed 20-story, mixed-use tower at 975/1005 Fuhrmann Boulevard ("2019 QCL project").

Ms. Wooster and I were told, during the November 25th conversation with Mr. Baxter, that we would not be allowed to review the 2019 QCL project application, including the Letter of Intent, until your office determined its "completeness" and scheduled the matter for a public hearing. Without access to the 2019 QCL project submission, I am compelled to base this correspondence on the limited information announced in the media, and, for that reason, am unable to independently confirm the specifics of the 2019 QCL project application.

With that being said, I respectfully ask that you and your office consider the following comments when determining the completeness of the 2019 QCL project documents, and when identifying the approvals required if the proposed project is to proceed to construction:

A. The City Planning Board's January 3, 2017 approval of QCL's Amended Site Plan Approval, for the construction of a 23-story mixed-use tower project at 975/1005 Fuhrmann Blvd. is no longer valid, and the UDO's provisions govern the 2019 QCL project.

As you undoubtedly know, QCL obtained the approvals required to build a 23-story mixed-use tower (as well as an adjacent parking garage) at 975/1005 Fuhrmann Blvd. pursuant to, not the UDO, but the City of Buffalo's prior Zoning Ordinance, found at Chapter 511 of Buffalo's City Code. Included among the approvals granted to QCL was the City Planning Board's

January 3, 2017 resolution approving QCL's Amended Site Plan application. (For your convenience, a copy of the 01/03/17 Amended Site Plan resolution accompanies this letter.)

Section 511-151 of the prior Zoning Ordinance, entitled, "*Limitations on approval*," states:

Section 511-151. Limitations on approval. *No design and site plan approval shall be valid for more than one year from the date of issue, unless a building permit is issued and construction has actually begun within that period and is commenced within that period.*

(For your convenience, a copy of Section 511-151 accompanies this letter.)

The *one-year anniversary* of the Amended Site Plan approval occurred on *January 3, 2018*, and we are fast approaching the passage of three years from the date the City Planning Board issued its design and site plan approval for QCL's 23-story tower at the former Freezer Queen site.

I have been advised by the City's Office of Permit and Inspection Services that QCL has never applied for, much less obtained, a building permit to construct the 23-story tower subsequent to its receipt of the January 3, 2017 Amended Site Plan approval. Therefore, pursuant to Section 511-151, QCL no longer has a valid design and site plan approval for the 2016/2017 project.¹

As you are undoubtedly aware, the UDO specifically addresses, at **Section 1.3 (Transition Rules)**, the manner in which projects which had been granted approvals prior to the April 3, 2017 effective date of the UDO are to be treated. Generally, such projects may proceed in accordance with the previously granted approvals. However, at Section 1.3.3B, the UDO expressly revokes a prior approval "*if the applicant fails to act before any approval expires*," and instructs that the provisions of the UDO govern. More specifically:

1.3.3 Previously Granted Approvals

...
B. If the applicant fails to act before any approval expires, including any periods of extension granted, the provisions of this Ordinance govern and the previous approval is revoked.

(For your convenience, a copy of UDO Section 1.3 Transition Rules accompanies this letter.)

¹ A November 19, 2019 article in the *Buffalo News* suggests that "outside influences" have "handcuffed" QCL's efforts to proceed with the 23-story project. According to the reporter, Jonathan Epstein, "Construction has been delayed as lawsuits over the project's approvals moved through the court system." In fact, litigation challenging the city's approvals for QCL's 23-story tower project ended nearly a year-and-a-half ago, on *June 29, 2018*, when the Appellate Division, Fourth Department, issued its *order dismissing the appeal in Wooster et al. v. Queen City Landing, LLC, et al.* (For your convenience, a copy of the 06/29/18 order accompanies this correspondence.) The *Buffalo News* article also mentions that QCL used the intervening time "completing remediation at the site." It should be noted, however, that it was twelve months ago, *December 14, 2018*, that the NYS Department of Environmental Conservation issued its "*Certificate of Completion*" for QCL's Brownfield Cleanup Program. (For your convenience, a copy of the DEC's "Summary of Project Completion Date" accompanies this correspondence.)

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In accordance with the above-quoted zoning provisions, Queen City Landing, LLC, no longer possesses a valid design and site plan approval to construct the previously approved 23-story project. Additionally, the standards and requirements of the UDO now govern both the project approved by the City of Buffalo in 2016/2017, and the 2019 QCL project.

B. 975/1005 Fuhrmann Blvd. is zoned N-1S, and, under the UDO, a tower is not a permitted Building Type in an N-S1 zone, and the maximum allowable height of a building is six stories; as a result, the 2019 QCL project requires, at a minimum, approval of its design and site plan application by the Planning Board, and variance(s) from the ZBA.

The City of Buffalo's on-line Property Information shows that 975/1005 Fuhrmann Blvd. is zoned N-1S. (For your convenience, a copy of 975 Fuhrmann Blvd.'s Property Information accompanies this letter.) Under the UDO, an applicant is required to select a "building type" that is allowed to be constructed within the zone where a proposed project is to be located, and the project must comply with the standards for that building type. (See UDO Section 3.2, 3.2.1.) The UDO's "TABLE 3A: BUILDING TYPES" identifies which building types are permitted in each zoning district.

As set forth in Table 3A, the only building types permitted in an N-1S zone – which is 975/1005 Fuhrmann Blvd.'s zoning classification – are "Attached House", "Civic Building", "Flex Building", and "Loft Building". **A "Tower" is a building type that is not "permitted" in an N-1S zoning district.** (For your convenience, a copy of the UDO's "TABLE 3A: BUILDING TYPES" also accompanies this letter.)

Additionally, a review of the pertinent sections of the UDO indicates that the maximum number of stories allowed for any of the four building types permitted in an N-1S zone is six stories. (See UDO Section 3.2.2E (Attached House, max. 4 stories, 52'); Section 3.2.4E (Civic Building, max. 6 stories, 90'); Section 3.2.7E (Flex Building, max. 1 story); and, Section 3.2.8 (Loft Building, max. 6 stories, 90').

Accordingly, at a minimum, the 2019 QCL project requires not only design and site plan review by the City Planning Board, but also variance(s) from the Zoning Board of Appeals.

Thank you for your kind consideration of this correspondence. And, please contact me if you have any questions or require additional information.

Respectfully submitted,

/s/ Arthur J. Giacalone
Arthur J. Giacalone
Enc.