

INTRODUCED: September 9, 2019

Expedited Consideration

A RESOLUTION No. 2019-R046

To support the Council’s desire for ZAC, LLC to perform certain further commitments relating to certain properties located at 201 Orleans Street, 25 Nicholson Street, and 101 Nicholson Street in the event that Council should approve the rezoning applications of ZAC, LLC relating to such properties.

Patron – President Newbille

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: SEP 9 2019 AT 6 P.M.

WHEREAS, proposed Ordinance Nos. 2019-209 and 2019-210, if adopted, would approve the rezoning applications of certain property located at 25 Nicholson Street, 101 Nicholson Street, and 201 Orleans Street (the “Rezoning Applications”); and

WHEREAS, the applicant, ZAC, LLC, has proposed to make further commitments regarding its development and use of the properties should the Council approve the Rezoning Applications, a copy of which commitments is attached hereto as Exhibit A (“the Further Commitments”); and

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: SEP 9 2019 REJECTED: _____ STRICKEN: _____

WHEREAS, the Council desires to memorialize its acceptance of the Further Commitments by its approval of the Rezoning Applications, should it in fact decide to approve the Rezoning Applications;

NOW, THEREFORE,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF RICHMOND:

That if the Council decides to approve the Rezoning Applications, it desires that Council Chief of Staff execute the acknowledgement of the Further Commitments made by ZAC, LLC, such that the Further Commitments may be viewed as part of the public record, provided that such acknowledgment shall not occur until ZAC, LLC has been approved by the Virginia State Corporation Commission to transact business in the Commonwealth of Virginia.



Richmond City Council

The Voice of the People

Richmond, Virginia

Lou Brown All
Council Chief of Staff

Office of the Council Chief of Staff

Ordinance/Resolution Request

RECEIVED
SEP 09 2019
OFFICE OF THE CITY ATTORNEY

TO Allen Jackson, City Attorney

THROUGH Meghan Brown, Interim Council Chief of Staff *MB*

FROM William E. Echelberger, Council Budget Analyst *WE*

COPY Cynthia I. Newbille, 7th District Council Member
Sam Patterson, 7th District Liaison
Haskell Brown, Deputy City Attorney

DATE September 9, 2019

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TITLE Memorandum of Understanding Related to Community Cooperation

This is a request for the drafting of an **Ordinance** **Resolution**

REQUESTING COUNCILMEMBER/PATRON

President Newbille

SUGGESTED STANDING COMMITTEE

Expedited Consideration

ORDINANCE/RESOLUTION SUMMARY

The patron requests a resolution expressing City Council desire, upon the approval of the rezoning applications, to authorize the Council Chief of Staff to execute the acknowledgement of the Further Commitments made by ZAC, LLC.

BACKGROUND

ZAC, LLC has submitted rezoning applications of property located at 25 Nicholson Street, 101 Nicholson Street, and 201 Orleans Street. The applicant has proposed to make further commitments regarding its development and use of the properties should Council approve the rezoning applications. This resolution is to express Council's desire to memorialize its acceptance of the further commitments by its approval of the rezoning applications, should it in fact decide to approve the rezoning applications. The further commitments include providing affordable housing, job creation and minority business opportunities, as part of the development of the project, and the commitment to support other community benefits.

FISCAL IMPACT STATEMENT

Fiscal Impact Yes No

Budget Amendment Required Yes No

Estimated Cost or Revenue Impact: None

Attachment/s Yes No

**MEMORANDUM OF UNDERSTANDING RELATED
TO COMMUNITY COOPERATION**

This Memorandum of Understanding (“MOU”) documents an agreement between ZAC, LLC (“ZAC”), a North Carolina limited liability company, and the City of Richmond, Virginia, a municipal corporation of the Commonwealth of Virginia (“City”) concerning the provision of certain commitments made by ZAC related to the provision of inclusionary housing, the use of minority business enterprises (“MBE”), and local job creation opportunities, in connection with its request to rezone property located in Richmond, Virginia and identified herein below for the purpose of establishing certain commercial and mixed-use developments thereon (the “Project”). This MOU reflects a cooperative understanding between ZAC and the City for the mutual benefit of both parties.

WHEREAS, on February 20, 2019, ZAC filed a rezoning application requesting the rezoning of Tax Map #E0000990006 and #E0001310001 (Part) (collectively “Property A”) from M-2 (Industrial) to B-7 (Mixed-Use), and a second rezoning application requesting the rezoning of E00011450001 (Part) (“Property B-1”) from M-1 (Industrial) to B-5 (Central Business District) (together “Property A” and “Property B-1” are defined herein as the “Property”, and the two (2) zoning applications are defined together as the “Zoning Applications”), in accordance with the requirements of the City of Richmond Zoning Ordinance; and

WHEREAS, Property A is proposed for commercial development (approximately 20,000 square feet of retail and office use); and

WHEREAS, Property B-1 is proposed for mixed-use development including the creation of approximately 216 multi-family units (the “Units”), and approximately 6,456 square feet of commercial use; and

WHEREAS, the Property is located in an area of the City which the parties agree should be protected from gentrification, and where efforts to promote job creation and minority businesses should be promoted; and

WHEREAS, the City has a public policy of increasing affordable housing stock in the City, including in the area of the Project; and

WHEREAS, ZAC in consideration for approval of the Zoning Applications by the City, is willing to provide affordable housing, job creation and MBE opportunities, as part of the development of the Project, and is committed to supporting other community benefits; and

WHEREAS, the parties desire to enter into this MOU to memorialize the commitments of the parties if the Property is rezoned by the City in accordance with the Zoning Applications.

NOW THEREFORE, in consideration of the premises, and the mutual benefits which the parties will enjoy by the implementation of this MOU, the parties agree as follows:



1. Affordable Dwelling Units. If the Property is rezoned by the City, substantially in accordance with the Zoning Applications as amended through July 25, 2019, ZAC shall reserve and make available at least 10% of the Units as “Affordable Units”, for a period of not less than fifteen (15) years. As used herein “Affordable Units” shall mean a Unit that is offered for occupancy by households earning up to 80% of “Area Median Income”. “Area Median Income” or AMI means the most recent annually adjusted household median income from the Richmond Metropolitan Statistical Area published by the United States Department of Housing and Urban Development. ZAC shall rent the Affordable Units to an Eligible Tenant at a maximum rate which is the greater of either i) not more than 80% of the Market Rate Units, or ii) 30% of the Eligible Tenant’s household income. An “Eligible Tenant” shall mean a tenant who earns not more than 80% of the AMI, as determined as of the date of the lease and any lease renewals for such Affordable Units. “Market-Rate Units” shall mean all other units in the Project that are not Affordable Units. ZAC shall offer each of the Affordable Units for lease to Eligible Tenants for a period not to exceed thirty (30) days, after which time, that unit may be rented as a Market-Rate Unit, provided that the next available Unit shall be offered as an Affordable Unit for a period not to exceed thirty (30) days, and so on, provided that the number of Affordable Units actually Leased or offered for Lease shall not exceed 10% of the total Units. ZAC will explore options for providing additional Affordable Units (but is not obligated to do so) where incentives may be offered by the City in exchange for the same.
2. Minority Business Enterprise Contracting. ZAC shall require that all construction contracts offer 100% participation to minority-owned businesses (MBE). Further, ZAC shall endeavor to utilize not less than 35% of MBE subcontractors and suppliers during the construction of the Project, provided such subcontractors are qualified and able to deliver the identified scope of work and/or product(s) upon roughly equivalent terms.
3. Job Creation. ZAC will promote the hiring of residents of Greater Fulton which may include, but not be limited to making job listings available to The Neighborhood Resource Center of Greater Fulton and encouraging commercial tenants to hire residents of Greater Fulton when possible. ZAC will encourage commercial tenants to participate in the Virginia Living Wage Certification Program and to engage with the City of Richmond Office of Community Wealth Building to provide employment opportunities, where possible. ZAC will also explore leasing opportunities for a potential grocery store/market to be operated on the Property.
4. Neighborhood Support. ZAC will support the Greater Fulton Civic Association (“GFCA”), the Neighborhood Resource Center, the Greater Fulton Business Association, the Fulton Montessori School, and Innovate Fulton, Inc., and will work with GFCA and other community non-profits, towards the completion and beautification of the Historic Fulton Memorial Park.
5. Support for Public Transit. ZAC will work with the Greater Richmond Transit Company to support public transportation alternatives for employees and tenants.

6. Governing Law. This MOU is an agreement made equally by the parties and is enforceable by the parties, and by no one other than the parties, in the Circuit Court of the City of Richmond, Virginia and in no other forum. This MOU is made in the Commonwealth of Virginia and is subject to Virginia law without regard for Virginia's laws governing conflicts of laws. This MOU may be modified, terminated, and/or replaced by written agreement of the parties. In the event the Zoning Applications are denied or approved in any manner not agreed to by ZAC, this MOU shall be null and void and of no further force or effect.

7. No Third-Party Beneficiaries. Notwithstanding any other provision of this MOU, the City and ZAC hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this MOU; (ii) the provisions of this MOU are not intended to be for the benefit of any individual or entity other than the City and ZAC; (iii) no individual or entity shall obtain any right to make any claim against the City or ZAC under the provisions of this MOU; and (iv) no provision of this MOU shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, tenants, subtenants, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this MOU.

8. Counterparts. This MOU may be executed by the City and ZAC in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same MOU.

9. MOU an Independent Obligation. Notwithstanding any provision of the Zoning Applications and any statement of proffers by ZAC related thereto or made a part thereof, this MOU shall stand as an independent obligation of ZAC if the Property is rezoned in accordance with the Zoning Applications.

(Signatures Appear on the Following Pages)

This MOU is agreed to by the parties as of this ___ day of September, 2019 (the "MOU Effective Date"), as witnessed by the signatures of the duly authorized representative of each party.

City:

Approved as to form:

CITY OF RICHMOND, VIRGINIA, a municipal corporation of the Commonwealth of Virginia

City Attorney

Acknowledged by: _____

Name: _____

Title: _____

Date: _____

COMMONWEALTH OF VIRGINIA CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of September, 2019, by _____, as _____ of the City of Richmond, Virginia, on behalf of the City.

Notary Public

My commission expires: _____

Notary registration number: _____

Seal

ZAC:

ZAC, LLC

By: _____

Name: _____

Title: _____

Date: _____

STATE OF NORTH CAROLINA CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this __ day of September, 2019, by _____, as _____ of ZAC, LLC on behalf of the Company.

Notary Public

My commission expires: _____

Notary registration number: _____

Seal