

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 08-07K  
Z.C. CASE NO. 08-07K  
Four Points Development, LLC  
(Two-Year Time Extension for PUD @ Square 5785, Lot 839 and Part of Lot 906)  
December 15, 2022

Pursuant to notice, at its public meeting on December 15, 2022, the Zoning Commission for the District of Columbia (the “Commission”) considered an application of Four Points Development, LLC (the “Applicant”) for:

- A two-year time extension of the November 22, 2022, deadline to start construction on Building 1 pursuant to the first-stage planned unit development (“PUD”) granted by Z.C. Order No. 08-07 (the “First-Stage Order”) and the second-stage PUD granted by Z.C. Order No. 08-07A (the “Second-Stage Order”) with modifications, as extended by Z.C. Order Nos. 08-07D and 08-07F; and
- A waiver from Subtitle Z § 705.5 to allow a third two-year time extension and a second extension for more than one year (together, the “Application”).

The Property that is the subject of the Application is Lot 839 and a part of Lot 906 in Square 5785 (collectively, the “Property”).

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**I. BACKGROUND**

**PRIOR APPROVALS**

1. By the First-Stage Order, effective on October 25, 2013, the Commission approved a first-stage PUD, with a related Zoning Map amendment from the C-2-A Zone District and C-M-1 Zone District to the C-3-A Zone District, to construct eight buildings in three phases on a site that includes the Property.

2. By the Second-Stage Order, effective May 22, 2015 (the “Effective Date”), the Commission approved a second-stage PUD with modifications to the approved first-stage PUD for Building 1 as a residential building with approximately 71 residential units, approximately 80% of which would be reserved for households earning up to 60% of the median family income.
3. Decision No. C.1 of the Second-Stage Order required the Applicant to:
  - a. File an application for a building permit to construct Building 1 within two years of the Effective Date—by May 22, 2017; and
  - b. Commence construction on Building 1 within three years of the Effective Date—by May 22, 2018.
4. The Applicant complied with the first deadline by filing a building permit application, B1508906, for Building 1 on June 15, 2015, as documented by an affidavit submitted with the Application. (Exhibit (“Ex.”) 3D.)
5. Z.C. Order No. 08-07D, effective October 12, 2018, extended the deadline for construction to start on Building 1 by two years to May 22, 2020.
6. Pursuant to the Commission’s emergency action in Z.C. Case No. 20-07, effective April 27, 2020, that amended Subtitle Z § 702.3 to respond to the COVID pandemic by automatically extending all construction deadlines set to expire between April 27, 2020 and December 31, 2020, the deadline to start construction of Building 1 was automatically extended by six months to November 22, 2020.
7. Z.C. Order No. 08-07F, effective July 30, 2021, extended the deadline for construction to start on Building 1 by two years to November 22, 2022.

## **PARTIES**

8. The parties to the First-Stage and Second-Stage Orders were the Applicant and Advisory Neighborhood Commission (“ANC”) 8A.

## **II. THE APPLICATION**

9. On October 21, 2022, prior to the November 22, 2022, deadline to commence construction of Building 1, the Applicant filed the Application requesting a two-year extension of the aforementioned deadline and a waiver from Subtitle Z § 705.5’s maximum two-time extensions for an approved PUD and maximum one-year period for a second time extension. (Ex. 3.)
10. The Application asserted it satisfied the requirement of Subtitle Z § 705.2(a) to serve all parties and attested by Certificate of Service, included with the Application, that the Applicant served the Application on ANC 8A, ANC Single Member Commissioner 8A06, and the Office of Planning (“OP”) on October 21, 2022. (Ex. 3A.)

11. The Application asserted that it satisfied the requirements of Subtitle Z § 705.2(b) because no substantial change had occurred in any of the material facts on which the Commission had relied upon in approving the Second-Stage Order.
12. The Application asserted that it satisfied the requirements of Subtitle Z § 705.2(c)(3) for the time extension because of the delays caused by the suspension of District governmental proceedings caused by the public health emergency for the COVID pandemic, which delayed the approval of a Tax Increment Financing (“TIF”) application for Buildings 4, 5, and 8 of the PUD that the Applicant requires to complete the entire PUD, including Building 1. Additionally, litigation between the business partners prevented the project from moving towards construction as initially planned.
13. The Application asserted that the same good cause—the delays in obtaining TIF financing for the overall PUD and the delays caused by litigation between the business partners—supported its requested waiver from Subtitle Z § 705.5’s maximum two-time extensions for an approved PUD and maximum one-year period for a second time extension.

### **III. RESPONSES TO THE APPLICATION**

#### **OP REPORT**

14. OP submitted a report on December 5, 2022 (the “OP Report”), that recommend approval of the Application based on OP’s conclusion that:
  - a. No substantial change had occurred to the material facts upon which the Commission had relied in issuing the Original Order;
  - b. The Applicant satisfied the relevant standards of Subtitle Z § 705.2; and
  - c. The Applicant satisfied the requirements of Subtitle Z § 101.9 for a waiver from Subtitle Z § 705.5. (Ex. 7.)

#### **ANC REPORT**

15. ANC 8A did not submit a report in response to the Application.

### **CONCLUSIONS OF LAW**

1. Subtitle Z § 705.2 authorizes the Commission to extend the time period of an order approving a PUD upon determining that the time extension request demonstrated satisfaction of the requirements of Subtitle Z § 705.2 and upon a determination that the limitations of Subtitle Z §§ 705.3, 705.5, and 705.6 have been adhered to.
2. The Commission concludes that the Applicant timely filed the Application on October 21, 2022, prior to the November 22, 2022 deadline to commence construction of Building 1 .
3. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that all parties are allowed 30 days to respond.

4. The Commission concludes that the Applicant has satisfied Subtitle Z § 705.2(a)'s requirement to serve all parties by demonstration that the Applicant served the only other party to the First-Stage and Second-Stage Orders—ANC 8A—and that the ANC was given 30 days to respond from the October 21, 2022 date of service.
5. The Commission concludes, based on the Application and the OP Report, that the Application satisfied Subtitle Z § 705.2(b)'s requirement that no substantial change in any of the material facts upon which the Commission based its original approval of the Second-Stage Order has occurred that would undermine the Commission's justification for that approval.
6. The Commission concludes that the Application met the standard of review of Subtitle Z § 705.2(c)(3) because the COVID-19 pandemic's impact upon District governmental proceedings delayed the approval of the TIF financing necessary for the construction of Building 1 and that litigation between the business partners prevented the project from moving towards construction as initially planned. These delays were beyond the Applicant's reasonable control and prevented the Applicant from complying with the deadline to commence construction of Building 1.
7. Subtitle Z § 101.9 authorizes the Commission to waive any provision, for good cause shown if, in the judgment of the Commission the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.
8. The Commission concludes that the same good cause for the time extension—the delays in obtaining TIF financing necessary for the overall PUD and the delays associated with litigation between the business partners—support the Applicant's requested waiver from Subtitle Z § 705.5's maximum two-time extensions for an approved PUD and maximum one-year period for a second time extension. And that the waiver will not prejudice the rights of the only party, ANC 8A, as an opportunity to respond to the Application was given to the ANC nor is it otherwise prohibited by law.

#### **“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP**

9. The Commission must give “great weight” to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)), and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
10. The Commission found OP's recommendation that the Commission approve the Application persuasive and concurs in that judgment.

#### **“GREAT WEIGHT” TO THE RECOMMENDATIONS OF ANC**

11. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood

Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)), and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

12. The affected ANC, ANC 8A, did not submit a report in response to the Application.

**DECISION**

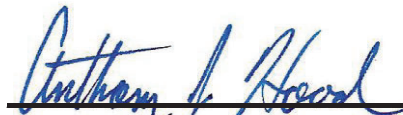
In consideration of the case record, the Findings of Fact, and the Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for a:


- Two-year time extension of the November 22, 2022 deadline to commence construction of Building 1 established by Z.C. Order Nos. 08-07, 08-07A, 08-07D, and 08-7F to November 22, 2024; and
- Waiver from Subtitle Z § 705. to allow a third two-year time extension and a second extension for more than one year.

**VOTE (December 15, 2022): 4-0-1**

(Peter G. May, Joseph S. Imamura, Anthony J. Hood, Robert E. Miller to **APPROVE**; 3<sup>rd</sup> Mayoral Appointee position vacant, not voting.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 08-07K shall become final and effective upon publication in the *D.C. Register*; that is, on January 20, 2023.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
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**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.