

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance (via-email)
From: Sharon S. Schellin ^{S3}
Secretary to the Zoning Commission
Date: June 9, 2009
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on June 12, 2009:

1. Z.C. Order No. 06-04A (Case No. ~~06-04A~~), and
2. Z.C. Notice of Public Hearing (Case No. 09-06).

Attachment

ZONING COMMISSION
District of Columbia

CASE NO. 06-04A
EXHIBIT NO. 5

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-04A
Z.C. CASE NO. 06-04A
(Florida & Q Street, LLC – 2-Year PUD Time Extension @ Square 3100, Lot 48)
March 9, 2009

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on March 9, 2009. At the meeting, the Commission approved a request from Florida & Q Street, LLC (the "Applicant") for a time extension for an approved planned unit development ("PUD") for property consisting of Lot 48 in Square 3100 (the "Subject Property") pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations. The Commission determined that an extension of time of the validity of the PUD is in the best interests of the District of Columbia and is consistent with the intent and purposes of the Zone Plan.

By Order No. 06-04, the Commission approved a PUD for the Subject Property and an application to amend the Zoning Map from the C-2-A to the C-2-B Zone District for the Subject Property. The Subject Property consists of approximately 18,984 square feet of land area. The approved PUD includes construction of a mixed-use development having a combined gross floor area of approximately 85,428 square feet, and two levels of underground parking. Approximately 81,428 square feet will be residential providing between 65-85 dwelling units and a total of 4,970 square feet of floor area will be provided for retail use in the cellar. The project will have an approximate density of 4.5 FAR and a maximum building height of approximately 86 feet at the corner of North Capitol Street and Florida Avenue, with substantial setbacks at the 65 foot level on all street fronts. Access to the parking garage and the loading dock area will be from Florida Avenue.

Pursuant to § 2408.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request made before the expiration of the approval. Section 2408.11 provides that an extension of the validity of a PUD may be granted by the Commission for good cause shown if an applicant has demonstrated with substantial evidence one or more of the following criteria: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

By letter dated and received by the Commission on February 5, 2008, the Applicant filed a request to extend the validity of the PUD approval for a period of two years, such that an application must be filed for a building permit for the PUD no later than June 15, 2011, and construction must start no later than June 15, 2012. The letter indicates that the project has experienced delay beyond the Applicant's control, specifically, since the PUD was initially approved, the unanticipated swift change in the sales and rental environment for the construction of residential projects has suffered significant downturns that have impeded the Applicant's ability to secure financing for this project. As the Commission has found in a

number of recent cases, the real estate market has been subject to, and continues to suffer from, severe financing, construction, sales and other impediments.

The Applicant indicated in its letter that it has worked diligently to secure financing for the project, and has met with numerous potential lenders and other financing sources, but has been unable to due to the inability to accurately project construction costs, carrying costs, and sales/rental income. To date, the Applicant indicated that it has been faced with the following impediments in attempting to obtain financing for the project: (1) construction costs for the project have increased significantly since the PUD was approved; (2) the Applicant has meet with a number of lenders, yet these efforts have not yielded financing for the project because market conditions and construction cost have continued to increase at an unpredictable rate; and (3) a number of the banks that the Applicant initially contacted for financing the project have either frozen lending for residential projects or have ceased lending operations due to the uncertainty in market conditions and the softening of the housing market.

Section 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.

The only other party to this application was Advisory Neighborhood Commission ("ANC") 5C. The Applicant served a copy of its request on ANC 5C. ANC 5C did not submit a response regarding the Applicant's request. Therefore, the Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.

The Commission finds that the Applicant has submitted the required evidence of the "good cause" for the requested extension. In consideration of the reasons set forth in this Order, the Zoning Commission for the District of Columbia hereby Orders that the validity of Zoning Commission Order No. 06-04 be extended for a period of two (2) years, such that an application must be filed for a building permit for the PUD no later than June 15, 2011, and construction must start no later than June 15, 2012.

On March 9, 2009, upon motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, and Peter G. May to adopt; Gregory N. Jeffries and Michael G. Turnbull to adopt by absentee ballots).

In accordance with the provisions of 11 DCMR §3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on June 12, 2009.