

GOVERNMENT OF THE DISTRICT OF COLUMBIA



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 08-34M

Z.C. Case No. 08-34M

CAPITOL CROSSING III, LLC and CAPITOL CROSSING IV, LLC

(Two Year PUD Time Extension for Property Located

@ Square 566, Lot 862 and 864)

November 9, 2023

Pursuant to notice, at its public meeting on November 9, 2023, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of CAPITOL CROSSING III, LLC and CAPITOL CROSSING IV, LLC (together, the “Applicant”) for a two-year extension of the validity of Z.C. Order No. 08-34L, which approved a second-stage Planned Unit Development (“PUD”) for the “Center Block” portion of the Capitol Crossing development project.

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, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

I. FINDINGS OF FACT

SECOND-STAGE PUD APPROVAL FOR THE CENTER BLOCK

1. Pursuant to Z.C. Order No. 08-34L, dated October 21, 2021, and effective as of March 25, 2022, the Commission approved a second-stage PUD for the Capitol Crossing Center Block located at Square 566, Lots 862 and 864 (together, the “Center Block”), in accordance with the first-stage PUD approved pursuant to Z.C. Order No. 08-34, dated May 23, 2011, and effective as of July 1, 2011, and the PUD Modification of Significance approved pursuant to Z.C. Order No. 08-34K, dated October 24, 2019, and effective as of October 30, 2020.
2. The second-stage PUD for the Center Block approved development of a residential building on Lot 862 (the “Residential Building”) and a hotel building on Lot 864 (the “Hotel Building”), to be connected through a shared two-story podium (the “Podium”).

CURRENT DEADLINES PURSUANT TO THE SECOND-STAGE PUD ORDER

3. Pursuant to Z.C. Order No. 08-34L, Decision No. III(2), the second-stage PUD for the Residential Building and the Podium is valid for a period of two years from the effective date of the second-stage PUD order (i.e., until March 25, 2024), within which time a building permit application(s) must be filed for the Residential Building and the Podium.

Construction of the Residential Building and the Podium must begin no later than three years from the effective date of the second-stage PUD order (i.e., by March 25, 2025).

4. Pursuant to Z.C. Order No. 08-34L, Decision No. III(3), the second-stage PUD for the Hotel Building is valid for a period of two years following issuance of the first certificate of occupancy for the Residential Building or Podium, within which time a building permit application must be filed for the Hotel Building. Construction of the Hotel Building must begin no later than three years following the issuance of the first certificate of occupancy for the Residential Building or the Podium.
5. Pursuant to Z.C. Order No. 08-34L, Decision No. III(4), if no certificate of occupancy is issued for the Residential Building or Podium within six years following the effective date of Z.C. Order No. 08-34L (i.e., by March 25, 2028), then the approval will expire unless otherwise extended by the Commission.

PARTIES AND NOTICE

6. The parties to the second-stage PUD (Z.C. Order No. 08-34L) were Advisory Neighborhood Commissions (“ANCs”) 2C and 6C. As of January 1, 2023, and as a result of the ANC boundary line redistricting, the Capitol Crossing PUD is now located entirely within the boundaries of ANC 6E.
7. On September 25, 2023, the Applicant served the Application on all three of the ANCs (2C, 6C, and 6E), as well on the Office of Planning (“OP”) and the District Department of Transportation (“DDOT”), as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2, p. 8.)

II. THE APPLICATION

8. On September 25, 2023, the Applicant timely filed the Application requesting a two-year extension of the validity of Z.C. Order No. 08-34L, such that a building permit application for the Residential Building and Podium would have to be filed by March 25, 2026, and construction of the Residential Building and Podium would have to begin by March 25, 2027.
9. The Application also requested a two-year extension of the six-year deadline within which a certificate of occupancy must be issued for the Residential Building or Podium without the approval expiring, such that the certificate of occupancy would have to be issued by March 25, 2030.
10. The Application asserted that it met the requirements under Subtitle Z § 705.2 for the proposed time extension because:
 - There has been no substantial change in any of the material facts upon which the Zoning Commission based its approval in Z.C. Order No. 08-34L;

- Good cause justifies the Commission’s granting the time extension because the Applicant has been unable to obtain sufficient project financing following its diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the Applicant’s reasonable control. The Applicant submitted an Affidavit of James Hallinan, the Vice President of the two entities that comprise the Applicant (the “Affidavit”), which described the Applicant’s good faith efforts to move forward with development of the Center Block, including the following: (Ex. 2D.)
 - Taking action to advance the overall Capitol Crossing development project, including (i) constructing the platform, below-grade parking and loading, and base infrastructure; (ii) delivering the North Block improvements; and (iii) constructing and opening the new portions of F and G Streets. On August 28, 2023, DDOT granted the Applicant’s request for “substantial completion” of the public space infrastructure and confirmed that the overall Capitol Crossing project is “in a physical condition that it can be used for normal and safe vehicular, pedestrian, bicycle, or other travel in all lanes and at all points of entry and exit.”; and (*See* Exhibit 1 to the Affidavit (Ex. 2D.).)
 - Taking action to advance the Center Block specifically, including:
 - Working with OP and DDOT to advance the Center Block’s traffic, parking, loading, and pedestrian considerations;
 - Obtaining DDOT Public Space Committee approval for all improvements in public space surrounding the Center Block, and constructing those improvements;
 - Working with residential property managers, prospective hotel operators, and retail brokerage organizations to finalize the Center Block’s unit mix, distribution of affordable units, and types of retailers;
 - Obtaining approvals and installing the utility infrastructure required to service the Center Block from DOEE, DC Water, PEPCO, Washington Gas, and Verizon; and
 - Preparing and recording a PUD Covenant for the Center Block; and
- The Affidavit also described the Applicant’s inability to obtain sufficient project financing following its diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond its reasonable control, including the following:
 - The Covid-19 pandemic, which created an inhospitable market for multi-family residential development generally;

- Increased construction costs, insufficient labor, and supply chain issues associated with the ordering, fabricating, and delivering of mechanical equipment, supplies, and construction materials;
- Nationwide inflation, resulting in increased borrowing costs, tightened credit, and market uncertainty overall;
- The unwillingness of the Applicant's investors to fund the Center Block due to the economic conditions and the debt and equity markets overall;
- The overall decline in apartment rents, increased vacancy rates, the District's flatlined population, and the recent opening of competing apartment buildings in the immediate neighborhood, creating a lack of demand; and
- The reluctance of retailers, restauraners, and grocers to lease space as they wait to see how economic conditions change or improve.

III. RESPONSES TO THE APPLICATION

11. OP submitted a report dated October 15, 2023 (Ex. 5.), which was replaced by a corrected report dated October 17, 2023 (the "OP Report"), which recommended approval of the Application. (Ex. 6.) The OP Report concluded that (i) the extension was properly served on all parties, which were given 30 days to respond; (ii) there have been no substantial changes in any material facts upon which the Commission based its original approval that would undermine its justification; and (iii) the Applicant demonstrated with substantial evidence its inability to obtain sufficient project financing, following its good faith efforts, because of changes in economic and market conditions beyond its reasonable control.
12. The OP Report specifically noted that the Application included requests for (i) a two-year extension to file a building permit application for the Residential Building and Podium; (ii) a two-year extension to start construction of the Residential Building and Podium; and (iii) a two-year extension of the deadline by which a certificate of occupancy must be issued for the Residential Building or Podium.
13. ANC 6E submitted a written report dated September 7, 2023 (the "ANC Report"), stating that at its regularly scheduled and properly noticed public meeting, with a quorum of Commissioners present, ANC 6E voted unanimously (6-0-0) to support the Application. (Ex. 3.) The ANC Report stated that the Applicant explained its request to extend the deadlines for the Center Block, that it was persuaded by the presentation, and that it concluded that the Applicant had met the burden of proof under the Zoning Regulations.

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 compliance with the limitations of Subtitle Z §§ 705.3, 705.5, and 705.6.

2. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that parties are allowed 30 days to respond.
3. The Commission concludes that the Applicant has satisfied Subtitle Z § 705.2(a) by demonstrating that it served all parties on September 25, 2023, and that the parties were given 30 days to respond from September 25, 2023.
4. Subtitle § 705.2(b) requires that the Commission finds that no substantial change has occurred to any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the PUD.
5. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) because there has been no substantial change to the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for that approval.
6. Subtitle Z 705.2(c) requires that an application demonstrate with substantial evidence one or more of the following criteria:
 - (1) *An inability to obtain sufficient project financing for the development, 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.*
 - (2) *An inability to secure all required government agency approvals for a development 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*
 - (3) *The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.*
7. The Commission concludes that the Application meets the standards of Subtitle Z § 705.2(c)(1) because the project has suffered significant disruption due to uncertainty caused by the Covid-19 pandemic, which created an inhospitable market for multi-family residential development. As the pandemic abated, other obstacles associated with increased construction costs, insufficient labor, supply chain issues, inflation, tightened credit, and market uncertainty arose nationally, which made the Center Block's investors unwilling to commit funding for the project. Taken together, the Applicant's inability to obtain sufficient project financing beyond its reasonable control, despite its good faith efforts, made compliance with the PUD's time limits unachievable.

“GREAT WEIGHT” TO THE RECOMMENDATION OF OP

8. The Commission is required to 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. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016.).)
9. The Commission finds OP’s recommendation to approve the Application persuasive and concurs in that judgment.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

10. The Commission must give “great weight” to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting 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. District of Columbia Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978.) (citation omitted).)
11. ANC 6E submitted a written report dated September 7, 2023, stating that at its regularly scheduled and properly noticed public meeting, with a quorum of Commissioners present, ANC 6E voted unanimously (6-0-0) to support the Application. (Ex. 3.) The Commission finds the ANC’s recommendation in support of the Application persuasive and concurs in that judgment.

DECISION

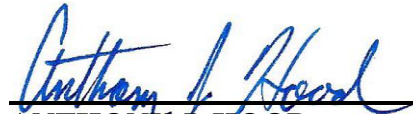
In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore APPROVES the Applicant’s request for a two-year extension of the validity of Z.C. Order No. 08-34L, with the requirement that the Applicant:

- File a building permit application to construct the Residential Building and Podium no later than **March 25, 2026**;
- Start construction of the Residential Building and Podium no later than **March 25, 2027**; and
- Obtain a Certificate of Occupancy for the Residential Building or Podium no later than **March 25, 2030**.


VOTE (November 9, 2023): 4-0-1

(Anthony J. Hood, Tammy Stidham, Robert E. Miller, and Joseph S. Imamura to **APPROVE**; 3rd Mayoral Appointee seat vacant).

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 08-34M shall become final and effective upon publication in the *District of Columbia Register*, that is on December 29, 2023.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS THE D.C. HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (THE “ACT”). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE 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. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.