

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission for the District of Columbia



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-04F
Z.C. CASE NO. 06-04F
Florida & Q Street, LLC
(Two-Year PUD Time Extension @ Square 3100, Lot 48)
July 11, 2016

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on July 11, 2016. At the meeting, the Commission approved a request from Florida & Q Street, LLC ("Applicant") for a time extension for an approved planned unit development ("PUD") for property consisting of Lot 48 in Square 3100 ("Subject Property") pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations ("DCMR").

FINDINGS OF FACT

1. Pursuant to Z.C. 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 "PUD"). The Subject Property consists of approximately 18,984 square feet of land area.
2. Pursuant to Z.C. Order No. 06-04C, the Commission approved a modification to the PUD. As modified, the PUD includes construction of a mixed-use development consisting of approximately 85,428 square feet of gross floor area ("GFA"). Approximately 84,306 square feet of GFA will be devoted to residential use, providing between 85 and 95 dwelling units, and approximately 4,998 square feet of floor area will be devoted to retail use in the cellar. The PUD will have a maximum density of 4.5 FAR, and a maximum building height of 72'-4½" (not including penthouses). The approved PUD will include 41 parking spaces located on one level of underground parking accessed from Florida Avenue, N.W.
3. Pursuant to Z.C. Order No. 06-04A, the Commission extended the validity of the PUD for a period of two years such that an application for a building permit would need to be filed no later than June 15, 2011, and construction of the project to commence no later than June 15, 2012.
4. Pursuant to Z.C. Order No. 06-04B, the Commission extended the validity of the PUD for an additional two years such that an application for a building permit would

5. need to be filed no later than June 15, 2013, and construction of the project is to commence no later than June 15, 2014.
6. Pursuant to Z.C. Order No. 06-04D, the Commission extended the validity of the PUD for an additional two years such that an application for a building permit would need to be filed no later than June 15, 2015, and construction of the project is to commence no later than June 15, 2016.
7. On June 1, 2016, the Applicant filed a request for a two-year time extension of the PUD, since, due to the lengthy process associated with procuring building permits, the Applicant would be unable to commence construction by June 15, 2016, as required by Z.C. Order No. 06-04D.
8. On June 10, 2015, the Applicant submitted applications for a building permit.
9. The Applicant submitted evidence that the project has experienced delays beyond the Applicant's control. As demonstrated in the materials submitted by the Applicant, including a sworn affidavit by Eyob Mamo, Manager, Florida & Q Street, LLC, the Applicant has worked diligently to advance the PUD but has been unable to do so due to the time required to obtain all necessary building permits. As noted, on June 10, 2015, the Applicant submitted an application for a building permit. Further, the Applicant has retained a development manager; undertaken extensive environmental analysis of the Subject Property; obtained several proposals for construction services including, but not limited to, civil and structural engineering, surveying, and subsurface exploration. Notwithstanding the foregoing, due to the extensive and lengthy governmental approvals required to obtain the required building permits, the Applicant was unable to begin construction of the PUD by the June 15, 2016 deadline established by Z.C. Order No. 06-04D.
10. On June 27, 2016, the Office of Planning ("OP") submitted a report recommending approval of the application for a period of one year, rather than the two-year period requested by the Applicant.
11. The only other party to the application was Advisory Neighborhood Commission ("ANC") 5E. On July 11, 2016, the ANC 5E submitted a resolution in support of the request.¹

¹ Simultaneously with the subject request for a two-year time extension, the Applicant filed an application for minor modification of the approved PUD to add penthouse habitable space to the proposed building which is assigned Z.C. Case No. 06-04E. The ANC 5E reviewed and voted to support both the time extension request and the minor modification at the same duly noticed meeting, and subsequently submitted its resolution in support of both this request and the application as part of the same resolution. While the resolution addressed both filings, it was only submitted to the record for the minor modification case (*See* Exhibit 5 of Z.C. Case

12. Because the Applicant demonstrated good cause with substantial evidence pursuant to § 2408.11(b) of the Zoning Regulations, the Commission finds that the request for the two-year time extension of the PUD should be granted.

CONCLUSIONS OF LAW

1. The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided in § 2408.11. (11 DCMR § 2408.10.) Subsection 2408.11 provides the following criteria for good cause shown: (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.
2. The Commission concludes that the Applicant complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the request and allowing them 30 days to respond.
3. The Commission concludes there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.
4. The Commission is required under § 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)) to give great weight to the affected ANC's recommendations. The Commission has carefully considered the ANC 5E's resolution in support of the request and agrees that approval of the requested two-year time extension is appropriate.

No. 06-04E). Therefore, by way of this Order, the ANC 5E's resolution is incorporated by reference into the record for the subject request.

5. The Commission is required under § 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 (2001)), to give great weight to OP recommendations. After careful consideration of the OP report, the Commission is not persuaded by OP's recommendation to limit the time extension to one year. Rather, noting the substantial investment made in the project thus far by the Applicant, and that a building permit has been applied for, the Commission is amendable to granting the time extension for a period of two years.
6. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11(b). Specifically, while the Applicant has filed for a building permit, because of the lengthy permit approval process the Applicant has been unable to secure all government agency approvals required to begin construction of the PUD by the expiration date established pursuant to Z.C. Order No. 06-04D.
7. Subsection 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.
8. 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.
9. The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

DECISION


In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the request for a two-year time extension of the validity of Z.C. Order No. 06-04, as modified by Z.C. Order No. 06-04C, such that construction of the PUD shall commence no later than June 15, 2018.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. 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 identify or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic information, or place of residence or business. Sexual harassment is a form of sex

discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also 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 the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On July 11, 2016, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull approve).

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 January 20, 2017.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA BARDIN
DIRECTOR
OFFICE OF ZONING