

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-04D
Z.C. Case No. 06-04D
Florida & Q Street, LLC
(Two-Year PUD Time Extension @ Square 3100, Lot 48)
November 18, 2013**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on November 18, 2013. 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 ("DCMR"). At the same time, the Commission also approved a modification to that approved PUD in Z.C. Case No. 06-04C. Z.C. Order No. 06-04C approving that modification is being issued simultaneously with this Order consistent with the Commission's intent that the PUD as modified shall be extended for the time periods set forth below.

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 Subject Property consists of approximately 18,984 square feet of land area.
2. The approved PUD, prior to the modification granted in Z.C. Order 06-04C¹, included 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 was previously approved to have an approximate density of 4.5 floor area ratio ("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.

¹ Among other things, the approved modification reduced the building's maximum height from 86 feet to 72 feet, four and one-half inches (not including roof structures and increased the amount of residential gross floor area to 84,306 square feet, but did not increase the overall floor area ratio. The range of apartment units was increased to between 85 and 95 dwelling units and approximately 4,998 square feet of floor area will be devoted to retail use in the cellar.

3. Pursuant to Z.C. Order No. 06-04A, the Commission granted a two-year extension of time for the PUD, extending the approval until June 15, 2011. Within said time an application was to be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations and construction of the project was 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 need to be filed no later than June 15, 2013, and construction of the project is to commence no later than June 15, 2015.
5. On May 31, 2013, the Applicant filed a request for a two-year extension of Z.C. Order No. 06-04, as extended by Z.C. Order Nos. 06-04A and 06-04B, such that an application must be filed for a building permit for the approved PUD no later than June 15, 2015, and construction to start no later than June 15, 2016.
6. The Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. Since the PUD was initially approved, the unanticipated 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. Indeed, the Commission has found in a number of cases that the changes in the economy and residential housing market conditions, combined with uncertainty in the markets, has resulted in a general lack of willingness on the part of lenders to finance projects. As indicated in the materials submitted by the Applicant, including materials prepared by the Applicant's real estate broker, the Applicant 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 volatility in the industry to secure project financing or attract a joint venture partner.
7. The Applicant has worked with Cassidy Turley, a leading commercial real estate services provider. Cassidy Turley has actively marketed the development site. They have developed a flyer and a Confidential Offering Memorandum providing details about the site and the development opportunities planned, as well as the surrounding neighborhood to potential investors. Cassidy Turley has reached out to 3,220 groups that include local developers, institutional investors, and major REITS, but none have been willing to provide financing for the approved PUD. The Applicant continues to work with many of the groups mentioned above, along with many others, on an ongoing basis to monitor the financial markets closely in order to secure the necessary financing for the project. Moreover, to date, the Applicant has been faced with the following impediments in attempting to obtain financing for the project:

- Construction costs for the project have increased significantly since the PUD was approved;
 - The Applicant has meet with a number of lenders, yet these efforts have not yielded financing for the project because market conditions and construction costs have continued to increase at an unpredictable rate; and
 - 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.
8. The Commission finds that the real estate market has been subject to, and continues to suffer from, severe financing, construction, sales, and other impediments. This major change in the real estate market has rendered it practically impossible for the Applicant to obtain project financing, despite the Applicant's good faith efforts. Based upon the supporting materials included with the Applicant's extension request, the Applicant has been unable to obtain project financing for the approved PUD project from the numerous lending institutions, investors, and joint venture partners it contacted. Thus, the project cannot move forward at this time, despite the Applicant's diligent, good faith efforts, and the Commission finds that this extension request satisfies the criterion for good cause shown as set forth in § 2408.11 of the Zoning Regulations.
9. The only other party to this application was Advisory Neighborhood Commission ("ANC") 5E. ANC 5E did not submit any comments on this application.
10. Because the Applicant demonstrated good cause with substantial evidence pursuant to Section 2408.11(a) and (b) of the Zoning Regulations, the Commission finds that the request for the two-year time extension of the approved 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 fact 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 application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.
3. The Commission concludes there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.
4. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the affected ANC's recommendations. ANC 5E did not submit any comments on this application.
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) to give great weight to OP recommendations. OP did not submit any comments on this application.
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(a) and (b). Specifically, the Applicant has been unable to obtain sufficient project financing for the PUD, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control. In addition, the Applicant was unable 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.
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 application 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 an application must be filed for a building permit for the modified PUD no later than June 15, 2015, and construction must start no later than June 15, 2016.


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.

On November 18, 2013, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony G. Hood Marcie I. Cohen. Robert E. Miller, and Michael G. Turnbull to adopt; Peter G. May, not having participated, not voting).

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 December 27, 2013.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING