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ZONING COMMISSION
District of Columbia

CASE NO. 04-14A

ZONING COMMISSION
District of Columbia
CASE NO. 04-14A
EXHIBIT NO. 8

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 04-14A

Z.C. Case No. 04-14A

Florida Rock Properties, Inc.

(Two-Year Time Extension @ 100 Block of Potomac Avenue, S.E.)

(Square 708, Lots 810, 811 and 812)

November 9, 2009

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on November 9, 2009. At the meeting, the Commission approved a request from Florida Rock Properties, Inc (the "Applicant") for a time extension for an approved second-stage planned unit development ("PUD") and related map amendment for property consisting of Lots 810, 811, and 812 in Square 708 (the "Property"), pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR")

FINDINGS OF FACT

1. By Zoning Commission Order No. 04-14 ("Order No. 04-14"), the Commission approved a second-stage PUD and related zoning map amendment for the Property to the C-3-C Zone District. The approved PUD authorized the construction of a mixed-use project of office, retail, residential, and hotel uses, having multiple vistas and views to and from the Anacostia River to the southeast and south and the Washington Nationals' Baseball Stadium ("Stadium") to the north (the "Project"). The Project was created in close consultation with various offices and departments of the District of Columbia government – including the Office of Planning ("OP") and the District Department of Transportation ("DDOT") – as well as with community representatives, in order to enhance the river front, complement the Stadium, and provide for pedestrian activity and excitement. The Project includes a total of 1,115,400 square feet of gross floor area, including 569,623 square feet devoted to residential and hotel uses and 545,777 square feet devoted to commercial uses, including a minimum of 80,000 square feet of gross floor area devoted to retail use. Maximum heights for the components of the building range from 92 feet to 130 feet.
2. Order No. 04-14 became effective upon publication in the *D C Register* ("DCR") on June 27, 2008. This order approved the Project to be constructed in four phases, with the requirement that the Applicant file for a building permit for Phase I of the Property ("Phase I"), which includes the proposed office building and open space on the east end of the Project, no later than June 27, 2010. Construction of Phase I must begin no later than June 27, 2011.
3. By letter dated and received by the Commission on September 25, 2009, the Applicant filed a request to extend the validity of the PUD approval for a period of two years. The request, if approved, would require that an application for a building permit must be filed for Phase I of the Project no later than June 27, 2012, and construction of Phase I must be

started no later than June 27, 2013. The Applicant's request was supported by exhibits setting forth details of the Applicant's inability to obtain project financing for at least Phase I of the Project at this time, as discussed in Finding Nos. 5 and 6.

- 4 The Applicant submitted evidence that the Project has experienced delay beyond the Applicant's control. Notwithstanding the delays experienced by the Applicant in commencing the Project, the Applicant has taken many steps since the effective date of Order No. 04-14 to move the Project forward, including the following.
 - (a) Preparing an ALTA Survey and processing with the D.C. Office of the Surveyor a subdivision of the Property consolidating multiple lots on multiple squares into a single lot of record in a single square (Lot 14, Square 708);
 - (b) Creating on the single lot of record, Assessment and Taxation Lots to correspond to the approved phasing for the Project;
 - (c) Contributing \$800,000 to the District of Columbia for the construction, installation, and/or ongoing maintenance of the adjacent Diamond Teague Park, such contribution having been made in coordination with the Deputy Mayor for Planning and Economic Development in November 2008, in accordance with Condition No. 8 of Order No. 04-14,
 - (d) Recording the required PUD Covenant in the Land Records for the District of Columbia on September 4, 2008, as required by Condition No. 14 of Order No. 04-14 and § 2409.3 of the Zoning Regulations;
 - (e) Continuing participation in public meetings for the South Capitol Street Improvement Project regarding the future improvements to South Capitol Street and the relocation of the Frederick Douglass Bridge (the "Bridge"),
 - (f) Working with DDOT to effect the land exchange required to accommodate the new Bridge realignment and roadway expansion that will facilitate future development of Phase III and Phase IV of the Project in accordance with the PUD;
 - (g) Advancing the approved designs for Phase I and Phase II of the Project with the preparation of architectural schematic drawings for those phases as a precursor to preparation of drawings for building permitting purposes, and
 - (h) Marketing the Project and monitoring market conditions in near Southeast D.C.
- 5 The real estate market has been subject to, and continues to suffer from, severe financing, sales, and leasing impediments as a result of the severe economic crisis. The present condition of the real estate market has rendered it impossible for the Applicant to secure

sufficient financing to commence development of Phase I of the Project, despite the Applicant's good faith efforts. After an intensive selection process, the Applicant retained the commercial real estate firm of Jones Lang LaSalle to solicit development expertise and equity commitments from major developers in the Metropolitan Washington D C market. Based on the letter from Jones Lang LaSalle submitted with the application, the Applicant's search did not result in any candidate that was willing to commit to a schedule for development of Phase I that would move Phase I of the Project forward within the current two-year approval period of the PUD that expires in June 2010, or willing to commit to provide equity funding for development of Phase I due to market conditions.

- 6 According to Jones Lang LaSalle's Real Estate Investment Banking ("JLL-REIB") group's Financing Opinion Letter ("Opinion Letter"), which was also submitted with the application, without equity funding for Phase I given the current economic climate, the Applicant would be unable to secure debt financing for the design, construction, and delivery of Phase I. According to the Opinion Letter, no lender contacted by JLL-REIB would agree to provide loan terms to the Applicant for Phase I of the Project without evidence of equity funding commitments and pre-leasing.
- 7 As supported by the evidence submitted by the Applicant, the Applicant is not able to secure project financing to proceed with Phase I of the Project within the approved period of Order No. 04-14, despite the Applicant's diligent, good faith efforts and based on changes in the economic and market conditions that are beyond the Applicant's control.
8. The Applicant served a copy of the request on Advisory Neighborhood Commission ("ANC") 6D, the only party to the case. ANC 6D submitted a letter dated October 22, 2009 in support of the requested extension.
- 9 Based on the initial and supplemental reports of OP and the photographs included therein, OP noted that there was no detrimental change in the condition of the Property since approval of the PUD that would indicate that the application should not be granted and that granting the requested extension will assist the Applicant in moving forward with this important waterfront project. The Commission concurs with these recommendations.
- 10 Since the Applicant has demonstrated good cause with substantial evidence pursuant to § 2408.11(a) 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) Section 2408 11 provides the following criteria for good cause shown (a) an inability to obtain sufficient project financing for the Project, 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 originally approving the PUD.
- 4 The Commission is required under D C Official Code § 1-309 10(d) to give great weight to the affected ANC's recommendations. The ANC supported the application as presented and the Commission has given great weight to that support
5. 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) Specifically, the Applicant has been unable to obtain project financing for the Project, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.
6. 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
- 7 The Commission concludes a hearing is not necessary for this request since there are no material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.
- 8 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 second-stage PUD approved in Zoning Commission Case No 04-14. The second-stage PUD approved by the Commission shall be valid until June 27, 2012, within which time an application shall be filed for a building permit for Phase I of the Project, as specified in § 2409.1 of the Zoning Regulations. Construction of Phase I must commence no later than June 27, 2013.

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 identity 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 Applicants 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 November 9, 2009, upon the motion made by Chairman Hood, as seconded by Vice Chairman Keating, the Zoning Commission **ADOPTED** this Order by a vote of 5-0-0 (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt).

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 4, 2009.