APPLICANT'S PROPOSED ORDER

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 04-14I
Z.C. Case No. 04-14I
Florida Rock Properties Inc.
(Six-Year Design Review Time Extension for the Marina @ Square 708, Lot 15)
June 12, 2025

Pursuant to notice, at its June 12, 2025, public meeting, the Zoning Commission for the District of Columbia ("**Commission**") considered the application ("**Application**") of Florida Rock Properties Inc. ("**Applicant**") for a six-year time extension of the design review ("**Design Review**") approved in Z.C. Order No. 04-14D for construction of a marina. The property that is the subject of this application is the riparian area adjacent to Lot 15 in Square 708 ("**Property**"). The Commission reviewed the Application pursuant to the Commission's Rules of Practice and Procedure, 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.

FINDINGS OF FACT

PRIOR APPROVALS

1. Lot 15 is located along Potomac Avenue, SE with Nationals Park to the north, the Anacostia River to the south, and the Frederick Douglass Bridge ("**Bridge**") and South Capitol Oval ("**Oval**") to the west. The Property includes the riparian area adjacent to Lot 15, which is comprised of 108,190 square feet. (Exhibit ["**Ex.**"] 2; 2C, p.2.)

2. The design review application for the marina was approved within the context of the "Riverfront PUD". Dating back to 1998, and most recently modified in Z.C. Case No. 04-14H ("**Modified PUD**"), the Riverfront PUD consists of four phases. The first two phases were completed in 2016 and 2020, respectively, with Dock 79, a mixed-use building with 305 units and approximately 18,364 square feet of retail, and Maren, a mixed-use building with 264 units and approximately 8,178 square feet of retail. As approved in the Modified PUD, Phases Three and Four will consist of two mixed-use residential and retail buildings with a significant amount of open landscaped space. (Ex. 2, p.1-2.)

3. Pursuant to Z.C. Order No. 04-14D ("**Order**"), the Commission approved a design review application for a marina on the Anacostia River, abutting the Riverfront PUD ("**Project**"). The Order also approved a second-stage PUD for Phase Two of the Riverfront PUD (now known as Maren). (Ex.2, p. 1.)

4. The Order required a building permit for the marina to be filed no later than (i) two years after the later of the completion of the reconstruction of the Bridge, (ii) the completion of the Oval, or (iii) the certificate of occupancy for Phase Two, and in no circumstances, later than 10 years after the effective date of the Order. The Applicant received notice from the District Department of Transportation ("**DDOT**") on May 26, 2023 that the Bridge and Oval had reached substantial completion, making the expiration date of the marina approval May 26, 2025. (Ex. 2C, p. 21-22.)

PARTIES AND NOTICE

5. The only party to the Order, other than the Applicant, was Advisory Neighborhood Commission ("**ANC**") 6D. Due to ANC boundary changes that went into effect on January 1, 2023, the Property is now located within the boundaries of ANC 8F with ANC 6D located across the street such that both ANC 6D and 8F are "affected ANCs" pursuant to Subtitle Z § 101.8. (Ex. 2, p. 3.)

6. On May 6, 2025, the Applicant served the Application on ANC 8F and ANC 6D as well as the Office of Planning ("**OP**") and DDOT, as attested by the Certificate of Service submitted with the Application. (Ex. 2, p.7.)

THE APPLICATION

7. On April 24, 2025, the Applicant timely filed the Application requesting a ten-year time extension of the Order, to extend the design review approval. The Applicant requested a waiver from the two-year limit of Subtitle Z § 705.3(a) and asked that it be allowed until May 26, 2035 to file for a building permit for the Project and May 26, 2036 for commencement of construction. (Ex. 2, p.3.)

8. The Application asserted that it met the requirements for a time extension enumerated in Subtitle Z § 705.2 because:

- While there have been substantial changes to the Property and surrounding area since the original approval of the marina, including numerous developments that have introduced new residents and vibrant retail to the neighborhood and completion of the Bridge and Oval, none of the changes undermine the basis for the Commission's approval of the marina; and

- There was good cause to grant the requested extension because the marina could not proceed prior to the completion of construction of the Frederick Douglass bridge. Further, the final phases of the Riverfront PUD could not proceed for second stage PUD approval prior to finalizing a land donation that would define the boundaries of the PUD. Once the land transfer was finalized in 2023, the Applicant proceeded with the second-stage applications for Phases Three and Four in Z.C. Case No. 04-14H. The Applicant explained that construction of the two mixed-use buildings approved by the Commission in the Modified PUD could not coincide with construction of the marina due to the physical proximity that would make simultaneous construction of the marina logistically challenging. The Commission approved phasing for Phases Three and Four in Z.C. Case No. 04-14H with the Phase Four building commencing construction within three years of issuance of the

order and a building permit for Phase Three required within two years of the issuance of a certificate of occupancy for Phase Four. Given that timeline, the Applicant requested the ten-year time extension of the Order for construction of the marina. (Ex. 2, p. 3-5.)

9. The Application asserted that it met the waiver requirements of Subtitle Z § 101.9 because:
   - The request did not prejudice any party because the marina was unique and, unlike development on land, marina use was the only development-related use for the water; and
   - The request was not otherwise prohibited. (Ex. 2, p. 5.)

10. The Commission first considered the Application on May 29, 2025. The Commission requested that the Applicant provide additional information regarding the extension request and the need for a ten-year time extension and left the record open for a supplemental submission from the Applicant and any reports from the affected ANCs. (Transcript ["**Tr.**"] of Zoning Commission May 29, 2025 Regular Public Meeting, at 29-31.)

11. In response to the Commission's comments, the Applicant filed a supplemental statement on June 4, 2025 that described the reasons for the delay in constructing the marina, including construction by the District of the Bridge and the Oval and the Applicant's dedication of 8,100 square feet of land in addition to the 6,702 square feet of the Property previously condemned for construction of the Bridge. The Applicant described the substantial waterfront improvements that were approved in Z.C. Case No. 04-14H and that would be constructed as part of Phase Four of the Riverfront PUD. The Applicant also revised the requested time extension from ten years to six years. (Ex. 5.)

12. The Applicant filed a letter on June 11, 2025 noting the Applicant's outreach to the "affected ANCs." (Ex. 6.)

RESPONSES TO THE APPLICATION

13. On May 15, 2025, OP submitted a report stating that OP believed the Application met the standards for the requested ten-year time extension and recommending approval of the Application. OP agreed with the Applicant that there has been no substantial change in any of the material facts upon which the Commission based its original approval and that the Applicant had demonstrated good cause for the extension. (Ex. 4.)

14. Neither ANC 8F nor ANC 6D submitted any written response to the Application.

CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the period of an order upon determining that the time extension request demonstrates satisfaction of the requirements of Subtitle Z § 705.2 and compliance with the limitations of Subtitle Z §§ 705.3, 705.4, and 705.6. Subtitle Z § 101.9 authorizes the Commission to waive any provision so long

as the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

2. The Commission concludes that the Applicant timely filed the Application prior to its expiration.

3. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that all parties are allowed 30 days to respond.

4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 705.2(a) by demonstrating that it had served ANC 8F and ANC 6D, the "affected ANCs", and that the ANCs were given 30 days to respond from the April 24, 2025 date of service.

5. Subtitle Z § 705.2(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the Design Review that would undermine the Commission's justification for approving the original application.

6. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) based on the Application and OP Report, which stated that no substantial change has occurred to the material facts upon which the Commission had relied in issuing the Order.

7. 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 governmental agency approvals for a development by the expiration date of the 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.

8. The Commission concludes that the Application met the standards of Subtitle Z § 705.2(c)(3) due to circumstances beyond the Applicant's reasonable control, including the finalization of a land transfer with DDOT which delayed development of Phases Three and Four of the Riverfront PUD and the marina. The Commission agrees that these matters constitute good cause for the requested six-year extension of the Order.

9. Subtitle Z § 101.9 authorizes the Commission to grant a waiver of any provision so long as the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

10. The Commission concludes that the Application satisfied Subtitle Z § 101.9 such that the Commission waives the two-year limitation on time extensions set forth in Subtitle Z § 705.3.

"Great Weight" to the Recommendations of OP

11. The Commission is required to give "great weight" to the recommendations of OP stated in the OP Report 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).

12. 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

13. 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. *Spring Valley-Wesley Heights Citizens Ass'n v. District of Columbia Zoning Comm'n*, 856 A.2d 1174, 1180 (D.C. 2004). 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).

14. Since ANC 8F and ANC 6D did not file responses to the Application, there is nothing to which the Commission can give "great weight."

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 Application's request for a Six-Year Time Extension of Z.C. Order No. 04-14D to extend the validity period and deadline to file for a building permit for the marina until May 26, 2031 and to commence construction until May 26, 2032.

VOTE (June 12, 2025): **5-0-0** (Anthony J. Hood, Tammy Stidham, Robert E. Miller, Joseph S. Imamura, and Gwen Wright to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 04-14I shall become final and effective upon publication in the *DC Register*; that is, on [ ], 2025.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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, 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.