

February 11, 2025

Via IZIS

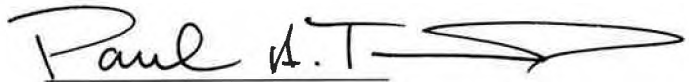
Anthony Hood, Chairperson
District of Columbia Zoning Commission
441 4th Street, NW, Suite 200-S
Washington, DC 20001

Re: Z.C. Case No. 06-10I: Applicant's Draft Order

Dear Chairperson Hood:

The Morris and Gwendolyn Cafritz Foundation ("**Applicant**") hereby submits a draft Order in the above-mentioned case. Please feel free to contact the undersigned if you have any questions or comments.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Paul A. Tummonds", followed by a long, horizontal, slightly wavy line that extends to the right.

Paul A. Tummonds

Certificate of Service

I hereby certify that a copy of the draft Order in ZC Case No. 06-10I was sent to the following by email on February 11, 2025.

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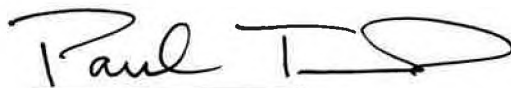
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A handwritten signature in black ink, appearing to read "Paul T. S.", with a horizontal line underneath.

Paul Tummonds
Attorney for the Applicant

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-10I
Z.C. Case No. 06-10I
The Morris and Gwendolyn Cafritz Foundation
(Two-Year Time Extension of 1st-Stage PUD @ Squares 3766 and 3767)
January 30, 2025

Pursuant to notice, at its January 30, 2025 public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of The Morris and Gwendolyn Cafritz Foundation (the “Applicant”) for a two-year time extension of the First-Stage PUD that was initially approved pursuant to Zoning Commission Order No. 06-10 and was extended to December 31, 2024, pursuant to ZC Order No. 06-10D. The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations”, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

Background

1. In ZC Order No. 06-10, effective as of January 15, 2010, the Zoning Commission approved the consolidated and first-stage PUD application for Art Place at Fort Totten (“APFT”). The APFT project included development of four blocks, Blocks A-D, with Consolidated PUD approval for Block A, and First-Stage PUD approval for Blocks B, C, D. The First Stage Order also granted a PUD-related map amendment for the Property to a combination of the C-2-B and FT/C-2-B zones, which became the MU-5-A zone effective September 2016. The APFT PUD Project was originally envisioned to include approximately 929 residential units, a full-service grocery store, significant community-serving retail and cultural uses, a children’s museum, and other significant amenities and community benefits. (Ex. 2.)
2. The construction of the building in Block A, which was subsequently modified in Order 06-10A (which shifted the grocery store use from Building A to Building B) and 06-10C (which reduced the amount of parking provided in Building A), was completed and The Modern at Art Place has been occupied since 2017. The Modern at Art Place currently includes 520 residential units (141 units are subject to an affordability covenant) and 92,000 square feet of retail use and commercial use (including tenants such as: One Life

Fitness; Ramdass Pharmacy; Shining Star Pediatric Dentistry; Menomale Restaurant; Urban Garden Brewery; and Love and Care Daycare). (Ex. 2.)

3. The Block B PUD Project, which received its second-stage PUD approval in ZC Order No. 06-10D (effective March 20, 2020), consists of a mixed-use building with two primary components – the Family Entertainment Zone (“FEZ”) and a residential component. The FEZ fronts on South Dakota Avenue and included the following uses: retail space/food hall; theatre/interactive space; gala/events space; Meow Wolf (an innovative arts collective); Explore! Children’s Museum; and an Aldi grocery store. The residential component of the Block B PUD Project, with frontage along the former 4th Street, NE (which was closed pursuant to DC Act 23-214), included approximately 271 units (30 reserved as artist affordable units) with ground floor retail spaces and ground floor artist maker spaces. Since the approval of ZC Order No. 06-10D, the Zoning Commission has approved three modifications of the Block B PUD Project (ZC Order Nos. 06-10E, 06-10G, and 06-10H). The Applicant noted that construction activity for the Block B PUD Project began in January of 2022 and to date the Applicant has spent over \$120,000,000 on the development of Block B. An Aldi grocery store opened its doors on December 5, 2024. (Ex. 2.)
4. The Applicant also noted that on February 15, 2018, the Office of the Zoning Administrator determined that a charter school could operate as a matter-of-right on the portion of the APFT PUD Property that was only subject to First-Stage PUD approval, part of the original Block C. In that letter, the Zoning Administrator concluded that the property’s inclusion within the First-Stage PUD approved in ZC Order No. 06-10 does not bar the owner or tenant of the property from operating a charter school on the property as a matter-of-right under its MU-28 Zone. As a result of this approval, the Rocketship Infinity Charter School and the Social Justice School began charter school operations on this property (5450 3rd Street, NE) in 2021. Since their opening, these schools have been very successful so much so that the Social Justice School is now in need of its own space across the street at 301 Kennedy Street, NE (also known as 5455 3rd Street, NE, which is also part of the original Block C). The 301 Kennedy Street, NE property is located within the MU-7B/FT Zone (which is the Zone that was formerly identified as the MU-28 Zone). The MU-7B/FT Zone allows charter school use as a matter-of-right, pursuant to Subtitle U, Section 515.1. (Ex. 2.)
5. Consistent with the Zoning Administrator’s determination of February 15, 2018, the Zoning Administrator confirmed, on July 15, 2024, that the Social Justice School is able to operate in the building located at 301 Kennedy Street, NE as a matter-of-right, provided all development standards of Subtitle G, Chapter 49 are satisfied. The Social Justice School is currently using temporary trailers, located on a portion of Block B, while renovation of the building at 301 Kennedy Street, NE is completed. The Zoning Administrator noted that the temporary charter school use on Block B was consistent with the arts and education uses approved in the Block B PUD Project and that these temporary trailers will not impede the construction of the residential uses approved on Block B. (Ex. 2.)

6. In regard to the Zoning Commission's previous review and approval of the period of the First-Stage PUD approval, the Applicant noted that Findings of Fact Nos. 35-39 and Condition No. G. 3. of ZC Order No. 06-10D addressed the timeline for the filing of the second-stage PUD applications for the development of Blocks C and D. Finding of Fact No. 37 and 38 state:
 37. The Applicant will file a second-stage PUD application for either Block C or Block D by December 31, 2024, which is expected to be two years after Block B is open and operating.
 38. The second-stage PUD application for the final development parcel included in the overall PUD will occur by December 31, 2030. (Ex. 2.)

Parties

7. The parties to the Z.C Case Nos. 06-10 and 06-10D other than the Applicant were Advisory Neighborhood Commissions ("ANCs") 5A and 4B, the "affected" ANCs pursuant to Subtitle Z § 101.8, and the Lamond-Riggs Citizens Association ("LRCA").

The Application

8. On December 20, 2024, the Applicant requested that the Commission extend until December 31, 2026, the First-Stage PUD approval. This extension request will provide the Applicant the opportunity to review, potentially revise, and move forward with Second-Stage PUD applications for the development of Blocks C and D. (Ex. 2.)
9. The Applicant stated that there has been no substantial change in any material facts that would undermine the basis for the Commission's original approval of the First-Stage PUD. In fact, numerous benefits and amenities of the APFT PUD project have already been provided. The development of Block A has delivered 520 (141 of which are subject to an affordability covenant) of the 920 residential units that were envisioned in the APFT project and Block B will create 270 more residential units. Block A includes a significant amount of retail and service uses (including a fitness club, restaurants, and a day care center) and Block B has delivered the promised full-service grocery store with a children's museum expected to be delivered in early 2026. (Ex. 2.)
10. ZC Order No. 06-10 approved the construction of an eight-story, 90 foot-tall residential building with 400 residential units on Block C and a seven-story, 90 foot-tall building on Block D that would include rehearsal and support space for Washington-area performing arts institutions and potentially a branch library. During the next two years, the Applicant stated it will further analyze whether these uses are still needed in this community (for instance the Lamond Riggs Library, located across South Dakota Avenue from the Property, recently completed a major renovation and recently reopened) or whether other arts, cultural, or education uses may be more appropriate. (Ex. 2.)

11. The Applicant also noted that since the Commission approved the First-Stage PUD the City Council has adopted modifications to the Comprehensive Plan that, among other things, require that the Commission evaluate zoning actions through the lens of racial equity, and the Commission has released criteria for such evaluation. Because the First-Stage PUD approval is in the form of a two-stage PUD, the Commission will have the opportunity as part of future Second-Stage PUD applications to review those applications' consistency with the Commission's racial equity evaluation standards. (Ex. 2.)
12. The Applicant stated that it has been a long-term member of this community for over 80 years. The Applicant has spent hundreds of millions of dollars in the development of Blocks A and B. The Applicant has brought two well-established and thriving Charter School uses to the Property and has delivered over 100,000 square feet of community serving retail, including a full-service grocer. Despite the significant investments of time, resources and financial capital that the Applicant has expended in the development and construction of Blocks A and B, circumstances outside the Applicant's control have prevented the Applicant from proceeding with the preparation and filing of Second-Stage PUD applications for Blocks C and D. (Ex. 2.)
13. Since the First-Stage PUD was approved, the Applicant has faced a global pandemic, unprecedented increases in construction costs, higher interest rates and tougher lending conditions. In fact, the Applicant lost years during the COVID pandemic in which the First-Stage PUD assumed development work would be progressing on Block B. As noted in Finding of Fact #37 of ZC Order No. 06-10D, it was anticipated that the development of Block B would have been completed by December, 2022 and there would have been two years of operations of the uses in Block B by the December 31, 2024 deadline to file a Second-Stage PUD for either Block C or Block D. As noted above, the Aldi grocery store just opened on December 5, 2024, and the other cultural, retail and residential elements have not been constructed at this time. Therefore, this time extension request for two more years to file Second-Stage PUD applications for Blocks C and D is consistent with the amount of time that the Applicant desired to have between the completion and occupancy of uses in Block B and the future development of Blocks C and D. (Ex. 2.)
14. In response to dialogue with representatives of ANC 5B, LRCA, and members of the surrounding community, the Applicant has agreed to undertake the following actions to enhance the physical appearance of the area around Blocks B, C, and D as follows:
 - The Applicant has prepared a full design program for a new fence with signage and art images, as well as banner signs on new light poles throughout the site;
 - The Applicant will install trashcans along South Dakota Avenue in front of Block B; and
 - The Applicant will work with LRCA, ANC 5B, and members of the community to activate the site (in particular the South Dakota Avenue frontage) while the planning for the future development of Blocks C and D progresses. (Ex. 2.)
15. On January 24, 2025, the Applicant submitted a letter requesting a waiver of Subtitle Z, Section 705.5 in order to extend the First-Stage PUD approval to December 31, 2026, a

two-year time period for the second time extension request. The Applicant stated that it did not believe a two-year time extension will prejudice the rights of any party and the request is not prohibited by law. (Ex. 5.)

OP Report

16. OP submitted a report dated January 17, 2025 (“OP Report”), stating that it recommended approval of the applicant’s request for a second extension of the approved PUD for a period of two years, to December 31, 2026. The OP Report noted that it supported a waiver to allow the second time extension request be for more than one year. (Ex. 4.)

Responses from Parties

17. The Applicant provided evidence that on December 20, 2024, it served the Application on ANC 5A, 4B, the LRCA, the District Department of Transportation (“DDOT”) and the Office of Planning (“OP”) as attested by the Certificate of Service submitted with the Application. (Ex. 2.)
18. Neither of the affected ANCs, 5A or 4B, submitted responses to the Application.
19. LRCA did not submit a response to the Application.

CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the period of an order approving a PUD upon determining that the time extension request demonstrated satisfaction of the requirements of Subtitle Z § § 705.3, 705.5, and 705.6.
2. The Commission concludes that the Applicant timely filed the Application on December 20, 2024, prior to the December 31, 2024 deadline granted in ZC Order No. 06-10D to file a Second-Stage PUD application for either Block C or Block D of the PUD. The Applicant now seeks to extend the deadline by two years to allow additional time to move forward with the Second-Stage PUD applications for the development of the Property.
3. Subtitle Z § 705.2 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) to serve the Application on all parties to the original proceeding, in this case ANCs 5A, 4B and the LRCA and that all parties were given 30 days to respond from the December 20, 2024 date of service.
5. Subtitle Z § 705.2(b) requires that the Commission find that 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 PUD.

6. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) based on the information provided in the Application materials and the OP report, which stated that no substantial change has occurred to any of the material facts upon which the Commission had relied in approving the original 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 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.
8. The Commission concludes that the Application met the standard of Subtitle Z § 705.2(c)(1), as the Applicant was unable to move forward with the preparation of second-stage PUD applications for Blocks C or D because of changes in economic and market conditions beyond its reasonable control. The Commission acknowledges the challenges associated with the global COVID pandemic, the unprecedented increases in construction costs, higher interest rates and tougher lending conditions that negatively impacted the Applicant. The Commission agrees that these matters were beyond the Applicant's reasonable control and rendered the Applicant unable to file second-stage PUD applications for Blocks C or D by December 31, 2024. The Commission finds that the two-year time extension request is appropriate and concludes that granting a PUD time extension for two years is in the public interest and is consistent with other time extensions that the Commission has granted.
9. The Commission concludes that the Application demonstrated good cause to waive Subtitle Z § 705.5's requirements that a second time extension request be extended for no more than one year. The Commission determined that, pursuant to Subtitle Z § 101.9, granting a waiver from Subtitle Z § 705.5's requirements will not prejudice the rights of any party nor is it otherwise prohibited by law. The Commission makes this conclusion because the parties to the original order – ANCs 5A and 4B and LRCA were served with the Application and allowed the opportunity to respond. Moreover, the Commission believes that a two-year time extension will give the Applicant adequate time to finalize a new development timeline and mix of uses for the remaining PUD property which better reflects the current and expected economic climate.

"Great Weight" to the Recommendations of OP

10. 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 (2001)) and Subtitle Z § 405.8, the Commission must give “great weight” to the recommendations of OP. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)
11. The Commission finds OP’s recommendation to approve the Application persuasive and therefore concurs that that judgment.

“Great Weight” to the Written Report of the ANC

12. 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)) and Subtitle Z § 406.2, the Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC. To satisfy this great weight requirement, District agencies 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 Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).
13. Neither of the affected ANCs, 5A or 4B, submitted responses to the case record; therefore, the Commission has nothing to which it 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 two-year time extension of ZC Order No. 06-10, as modified by ZC Order No. 06-10D, to extend the deadline to December 31, 2026, to file Second-Stage PUD applications for the development of Blocks C and D of the PUD.

On January 30, 2025, upon the motion of _____ as seconded by _____, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Gwen Wright, Tammy Stidham, and Joseph S. Imamura)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 06-10I shall become final and effective upon publication in the *DC Register*; that is, on _____, 2025.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.

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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.