

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
ZONING COMMISSION**

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 08-34N**

**Z.C. Case No. 08-34N**

**CAPITOL CROSSING V LLC**

**(Two Year PUD Time Extension for Property Located @ Square 568, Lot 865)**

**May 29, 2025**

Pursuant to notice, at its public meeting on May 29, 2025, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of CAPITOL CROSSING V LLC (“Applicant”) for a two year extension of the validity of Z.C. Order No. 08-34A, as modified by Z.C. Order No. 08-34F, which approved a second-stage Planned Unit Development (“PUD”) for development of an office building at Square 568, Lot 865 (“Property”) within the South Block of the Capitol Crossing development project.<sup>1</sup>

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of the Zoning Regulations of the District of Columbia, Title 11 of the District of Columbia Municipal Regulations (“Zoning Regulations”), to which all subsequent citations refer unless otherwise specified. For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**PRIOR PUD APPROVALS**

1. Pursuant to Z.C. Order No. 08-34, dated May 23, 2011, and effective as of July 1, 2011, the Commission approved (i) a first-stage PUD for land and air rights above the Center Leg Freeway in an area generally bounded by Massachusetts Avenue, NW to the north, 2<sup>nd</sup> Street, NW to the east, E Street, NW to the south, and 3<sup>rd</sup> Street, NW to the west (“Overall PUD Site”); (ii) a consolidated PUD for a portion of the Overall PUD Site; and (iii) a Zoning Map amendment to the C-4 zone for the Overall PUD Site.
2. Pursuant to Z.C. Order No. 08-34A, dated January 28, 2013, and effective as of March 1, 2013, the Commission approved a second-stage PUD for the Property in accordance with Z.C. Order No. 08-34. The second-stage PUD approved development of the Property with a 130-foot tall office building with ground-floor retail (“Office Building”).
3. Pursuant to Z.C. Order No. 08-34F, dated May 23, 2016, and effective as of August 5, 2016, the Commission approved a Minor Modification to the Office Building to remove the previously-approved eco-chimney, revise the design of the building façade and penthouse, and permit habitable space within the penthouse.

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<sup>1</sup> At the time that PUD Order Nos. 08-34A and 08-34F were approved, the Property was known as Assessment & Taxation (“A&T”) Lot 862 (part of Record Lot 44) in Square 568. The A&T lot numbers have since changed, but the underlying record lot continues to be Record Lot 44 in Square 568.

## **DEADLINES TO FILE BUILDING PERMIT APPLICATION AND START CONSTRUCTION PURSUANT TO THE SECOND-STAGE PUD ORDERS**

4. Pursuant to Z.C. Order No. 08-34A, Decision No. C.2, the second-stage PUD for the South Block was “valid for a period of two (2) years from the date of completion of the platform and base infrastructure approved in Z.C. Order No. 08-34. Within such time, the Applicant shall apply for a building permit for the construction of the South Block Building. The Applicant shall commence construction of the South Block Building within four years of the completion of the construction of the platform and base infrastructure” (emphasis added).<sup>2</sup> The term “completion of the platform and base infrastructure” was not defined in Z.C. Order No. 08-34A.
5. In 2019, the Zoning Administrator for the District of Columbia (“Zoning Administrator”) confirmed that the date of “completion of the construction of the platform and base infrastructure” would be considered the date that a “Certificate of Substantial Completion” of construction of the deck and bridges is issued by the District Department of Transportation (“DDOT”) accepting the tunnel and streets as part of the public space within DDOT’s jurisdiction.
6. In 2021, the Zoning Administrator acknowledged that DDOT would not issue a Certificate of Substantial Completion, and instead the District, through the Deputy Mayor for Planning and Economic Development, would execute an Acknowledgment of Substantial Completion (“Acknowledgment”), which would be recorded in the Land Records for the District of Columbia (“Land Records”), and that the date that the Acknowledgment is recorded in the Land Records would be the date assigned to the “completion of the platform and base infrastructure” as set forth in Z.C. Order No. 08-34A.
7. On August 28, 2023, DDOT issued a letter granting the Applicant’s “Request for Substantial Completion” (“DDOT Substantial Completion Letter”), confirming that the construction of the platform and base infrastructure was complete. In 2023, the Zoning Administrator further confirmed that the date of issuance of the DDOT Substantial Completion Letter would be the date assigned to the “completion of the platform and base infrastructure” as set forth in Z.C. Order No. 08-34A. This determination was based on the fact that the DDOT Substantial Completion Letter would ultimately be the basis for the District’s issuance of the Acknowledgment, which would be recorded at a later date.
8. Accordingly, the Applicant is required to submit a building permit application for the Office Building no later than August 28, 2025 (two years following the date of issuance of the DDOT Substantial Completion Letter), and must start construction of the Office Building no later than August 28, 2027 (four years following the date of issuance of the DDOT Substantial Completion Letter), all in accordance with Z.C. Order No. 08-34A, Decision No. C.2 and the subsequent Zoning Administrator confirmations.

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<sup>2</sup> The term “South Block Building” in Z.C. Order No. 08-34A referred to what is called the “Office Building” in this Order.

9. In March, 2021, the Applicant submitted building permit application B2105989 (“Permit Application”) for the construction of the Office Building as approved in Z.C. Order No. 08-34A, as modified by Z.C. Order No. 08-34F. The Permit Application was processed through the majority of the disciplines at the D.C. Department of Buildings, including the Zoning department which approved the Permit Application on April 29, 2022. Unfortunately, due to changes in the Construction Code that became applicable to the Office Building, additional revisions were needed to the plans submitted with the Permit Application. Due to the work needed for those changes, combined with worsening economic and market conditions, the Applicant did not pull the building permit associated with the Permit Application.
10. The Application therefore requested an extension of the building permit application and construction start deadlines based on a variety of conditions, circumstances, and factors beyond the Applicant’s reasonable control that rendered the Applicant unable to comply with the applicable time limits. Specifically, the Application requested a two year extension of the validity of Z.C. Order No. 08-34A, as modified by Z.C. Order No. 08-34F, such that a building permit application for the Office Building on the Property must be filed by August 28, 2027, and construction of the Office Building on the Property must begin by August 28, 2029.

#### **PARTIES AND NOTICE**

11. The parties to the second-stage PUD were Advisory Neighborhood Commissions (“ANCs”) 2C and 6C. As of January 1, 2023, and as a result of the ANC boundary line redistricting, the Overall PUD Site is now located entirely within the boundaries of ANC 6E. The Application acknowledged that certain sections of Subtitle Z of the Zoning Regulations provide that only the newly affected ANCs must be served if the affected ANCs changed since the effective date of the final order at issue (e.g., Subtitle Z § 703.10); however, Subtitle Z § 705 governing time extensions does not include such language. Accordingly, as indicated in the Certificate of Service (Ex. 2), the Applicant served the Application on all three of the ANCs (2C, 6C, and 6E), thus providing the required time period in which to respond.

#### **THE APPLICATION**

12. On April 14, 2025, the Applicant timely filed the Application requesting a two-year extension of the validity of Z.C. Order No. 08-34A, as modified by Z.C. Order No. 08-34F, such that such that a building permit application for the Office Building on the Property must be filed by August 28, 2027, and construction of the Office Building on the Property must begin by August 28, 2029.
13. The Application asserted that it met the requirements under Subtitle Z § 705.2 for the proposed time extension because:
  - There had been no substantial change in any of the material facts upon which the Zoning Commission based its approval of the Office Building in Z.C. Order No. 08-34A, as modified by Z.C. Order No. 08-34F.
  - Good cause justified the Commission in granting the time extension due to a variety of conditions and factors beyond the Applicant’s reasonable control. The

Application included an affidavit of George W. Cantrell, III, the President of Capitol Crossing Advisors LLC (“Affidavit”) (Ex. 2E), which described the Applicant’s good faith efforts to move forward with development of the South Block, including the following:

- Taking actions to advance the overall Capitol Crossing development project generally, including (i) constructing the platform, base infrastructure, and below-grade parking and loading facilities for the entire project; (ii) delivering two new office buildings on the North Block; (iii) delivering the new rectory and annex buildings in the Center Block for the Holy Rosary Church; and (iv) relocating the historic Adas Israel Synagogue from the South Block and coordinating construction of new facilities for the Jewish Historical Society. (Ex. 2, 2E.)
- The Applicant also worked with DDOT on the design, permitting and construction of major new public infrastructure, including (i) the construction and opening of F and G Streets, NW; (ii) the construction of roadway subbase and resurfacing on 2<sup>nd</sup> and 3<sup>rd</sup> Streets and Massachusetts Avenue, NW; (iii) the modification of bridges on E Street and Massachusetts Avenue; and (iv) construction of a new highway entrance and a new exit portal. It also installed new traffic signals, street lights, water and sewer lines, and curb inlets, and relocated a major water main in Massachusetts Avenue. Overall, the Application stated that the Applicant spent approximately \$200 million in public space infrastructure thus far, which benefits the District as a whole. (Ex. 2, 2E.)
- The Application also summarized the Applicant’s continued progress on the South Block specifically, including (i) obtaining DDOT Public Space Committee approval for all improvements in public space surrounding the South Block; (ii) preparing and recording the required DDOT Covenant for Special Paving and Fixtures in Public Space; (iii) obtaining approvals for and installing utility infrastructure to service the South Block from DOEE, DC Water, PEPCO, Washington Gas, and Verizon; and (iv) preparing and recording a PUD Covenant for the South Block. (Ex. 2, 2E.)
- The Application and Affidavit also described the Applicant’s difficulty in moving forward with development of the South Block within the required timeframes. Prior to Covid-19, the Applicant had worked with brokers to market the Office Building as a build-to-suit for a large office headquarters; however, the primary focus shifted as a result of the pandemic. The Application stated that impacts from the pandemic created an inhospitable market for office development due to high construction costs, insufficient labor, supply chain issues, inflation, rising interest rates, and a weak lending market. Thus, despite the Applicant’s good faith efforts, it was unable to move forward with development of the Office Building for a variety of conditions, circumstances, and factors beyond the Applicant’s reasonable control, which included the following:

1. Extraordinarily high office vacancy rates and little demand for the construction of new office space nationwide, in the District of Columbia, and at the North Block office buildings specifically;
  2. Challenges to the construction industry, including the increased costs of labor and materials, which result in a major disruption to office building construction; and
  3. The reluctance of retailers, restaurateurs, and grocers to lease ground floor space until economic market conditions change or improve. (Ex. 2, 2E.)
- Despite the foregoing, the Application explained that Applicant is fully committed to moving forward with development of the Property and remains engaged with the brokerage and investment communities on a continuing basis to evaluate potential opportunities. Given return-to-office mandates across multiple industries, the Application reiterated the Applicant's belief that the office market would improve in the nearer-term future, and if not, that the Applicant would submit a separate application for a modification to the approved PUD for the Property to reflect a marketable and realistic development proposal.

#### **RESPONSES TO THE APPLICATION**

14. OP submitted a report dated May 15, 2025 (Ex. 6) ("OP Report"), which recommended approval of the Application. The OP Report concluded that (i) the Application was properly served on all parties, which were given 30 days to respond; (ii) there have been no substantial changes in any material facts upon which the Zoning Commission based its original approval that would undermine its justification; and (iii) the Applicant demonstrated with substantial evidence its inability to obtain sufficient project financing, following its good faith efforts, because of changes in economic and market conditions beyond its reasonable control.
15. ANC 6E submitted a written report dated May 5, 2025 ("ANC Report"), stating that at its regularly scheduled and properly noticed public meeting, with a quorum of Commissioners present, ANC 6E voted 4-0-0 to support the Application. (Ex. 5.) The ANC Report stated that the requested extension did not entail any changes to the original purposes of the PUD and would allow the Applicant to continue to pursue financing for the project.

#### **CONCLUSIONS OF LAW**

1. Subtitle Z § 705.2 authorizes the Commission to extend the time period of an order approving a PUD 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, 705.5, and 705.6.
2. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that parties are allowed 30 days to respond.

3. The Commission concludes that the Applicant satisfied Subtitle Z § 705.2(a) by demonstrating that it served all parties on April 14, 2025, and that the parties were given 30 days to respond from April 14, 2025.
4. Subtitle § 705.2(b) requires that the Commission finds that no substantial change has occurred to any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the PUD.
5. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) because there has been no substantial change to the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for that approval.
6. Subtitle Z § 705.2(c) requires that an application demonstrate with substantial evidence one or more of the following criteria:
  - 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;
  - An inability to secure all required government 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
  - 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.
7. The Commission concludes that the Application meets the standards of Subtitle Z § 705.2(c)(3) because the project has suffered significant disruption due to uncertainty caused by the Covid-19 pandemic, which created an inhospitable market for office development. Other obstacles associated with increased construction costs, insufficient labor, supply chain issues, inflation, tightened credit, and market uncertainty arose nationally, which prevented the Applicant from moving forward with development of the Office Building. Thus, the Commission finds that the Applicant provided evidence of a variety of conditions beyond its reasonable control that rendered it unable to comply with the time limits of the applicable orders.

#### **"GREAT WEIGHT" TO THE RECOMMENDATION OF OP**

8. The Commission is required to give "great weight" to the recommendations of OP 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).)

9. 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**

10. 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. (*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 Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted).)
11. ANC 6E submitted a written report dated May 5, 2025, stating that at its regularly scheduled and properly noticed public meeting, with a quorum of Commissioners present, ANC 6E voted 4-0-0 to support the Application. (Ex. 5.) The Commission finds the ANC's recommendation in support of the Application persuasive and concurs in that judgment.

**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 Applicant's request for a two year extension of the validity of Z.C. Order No. 08-34A, as modified by Z.C. Order No. 08-34F, with the requirement that the Applicant:

- File a building permit application to construct the Office Building on the Property no later than **August 28, 2027**; and
- Start construction of the Office Building on the Property no later than **August 28, 2029**.

**VOTE (May 29, 2025):** 5-0-0 (Joseph S. Imamura, Anthony J. Hood, Robert E. Miller, Tammy Stidham, Gwen Wright to APPROVE).