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ID	Status	Register Category	Subject	Register Issue	Action Date
3970130	Submitted to ODAI	Notices, Opinions	Zoning Commission Order No. 08-31: Bao-An Anguyen C.	11/2/2012 Vol 59/44	10/31/2012 13:00:56
3970033	Submitted to ODAI	Notices, Opinions	Zoning Commission Order No. 11-11: 1711 Florida Avenue	11/2/2012 Vol 59/44	10/31/2012 13:00:15
3965086	Submitted to ODAI	Public Hearing	Board of Zoning Adjustment - Public Hearing Notice - January 15, 2013	11/9/2012 Vol 59/45	10/31/2012 09:41:19
3957035	Submitted to ODAI	Notices, Opinions	Board of Zoning Adjustment - Order No. 17809-B - Jemal's Uline LLC, Motion for a Second Two-Year Extension of BZA Order No. 17809, Pursuant to 11 DCMR 3130 - ANC 6C	11/2/2012 Vol 59/44	10/25/2012 10:14:26
3956744	Submitted to ODAI	Notices, Opinions	Board of Zoning Adjustment - Order No. 18420 - AT&T - ANC 4C	11/2/2012 Vol 59/44	10/25/2012 10:03:40
3956647	Submitted to ODAI	Notices, Opinions	Board of Zoning Adjustment - Order No. 18205 - Mohammed Sikder - ANC 7D	11/2/2012 Vol 59/44	10/25/2012 09:57:42
3948402	Submitted to ODAI	Notices, Opinions	Board of Zoning Adjustment - Order No. 18458 - Kevin Plank - ANC 2E	11/2/2012 Vol 59/44	10/24/2012 12:03:40
3948305	Submitted to ODAI	Notices, Opinions	Board of Zoning Adjustment - Order No. 18457 - Stephen D. McCreary and Beth Van Hanswyk - ANC 3/4G	11/2/2012 Vol 59/44	10/24/2012 12:00:46
134750	Unconfirmed	Notices, Opinions	Board of Zoning Adjustment Summary Order No. 18014	1/22/2010 Vol 57/4	1/27/2010 22:14:19

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ZONING COMMISSION
District of Columbia
CASE NO. 11-11
EXHIBIT NO. 15

ZONING COMMISSION
District of Columbia
CASE NO.11-11
EXHIBIT NO.15

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-11
Z.C. Case No. 11-11
1711 Florida Avenue Property, LLC
(Consolidated PUD & Related Map Amendment @ Square 2562)
July 9, 2012

At a public meeting on July 9, 2012, the Zoning Commission for the District of Columbia (the "Commission") held a public meeting to consider an application from 1711 Florida Avenue Property, LLC (the "Applicant"), for approval of a consolidated planned unit development ("PUD") and related map amendment for Lot 95 in Square 2562 ("Property"), located at 1711 Florida Avenue in the Northwest quadrant of the District, pursuant to Chapters 1, 24, and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). For the reasons stated below, the Commission hereby dismisses the application without prejudice.

FINDINGS OF FACT

The Application and OP Report

1. On June 2, 2011, the Applicant submitted an application for the consolidated approval of a PUD and a related amendment to the zoning map, proposing development of the Property with a mixed-use residential and commercial building with accessory and public parking. The proposed building would have a total floor area ratio ("FAR") of 5.8, a building height of 79 feet, eight inches, and occupy 80% of the lot. The project would contain 125-130 residential units of which 10% will be devoted to affordable housing. The project would also contain approximately 5,500 square feet of commercial space. The Project will include 95 parking spaces. The Applicant further requested a PUD-related map amendment to change the zoning of the Property from RC/C-2-B to C-2-B. ("Application"). (Exhibits 1-3.)
2. The Office of Planning ("OP") submitted a report dated July 15, 2011. The report stated that the project would benefit the neighborhood and District more than a matter of right project, and that the proposed project would not be inconsistent with the written elements of the Comprehensive Plan. However, the report further stated that additional analysis was required to determine if the proposed project was not inconsistent with the Comprehensive Plan's Future Land Use Map, which designates the Property for low-density commercial uses, and to determine if the proposed benefits and amenities were sufficient to justify the zoning relief requested. (Exhibit 10).

Public Meetings and Letters from the Applicant

3. At its public meeting on July 25, 2011, the Commission considered the Application and OP's report pursuant to § 3011 of the Zoning Regulations. The Commission indicated that it had concerns about the Application, namely, (1) whether the proposed building is inconsistent with the Future Land Use Map of the Comprehensive Plan, and (2) whether the benefits and amenities proffered were sufficient to justify the amount of zoning relief

requested. The Commission also indicated it was interested in learning more about the community's reaction to the proposal, and requested that OP include this information in a subsequent report to the Commission. The Commission deferred taking action on the Application in order to give the Applicant and OP time to address these issues, and indicated it would consider the case again at its September 26, 2011 public meeting.

4. By letter dated August 26, 2011, the Applicant requested a further deferral of up to six months to allow it to address the concerns raised by the Commission. (Exhibit 11.) The Commission granted this request at its September 26, 2011 public meeting.
5. By letter dated March 19, 2012, the Applicant requested a further six-month deferral. (Exhibit 12.) The Commission granted this request at its March 26, 2012 public meeting.
6. By letter dated June 28, 2012, the Applicant acknowledged that it had not been able to substantively address the issues raised by the Commission in the time allotted. The Applicant stated that it anticipates returning to the Commission after it has had an opportunity to develop revised plans, and work with the community, ANC 1C, and OP. It, therefore, requested that the Commission dismiss the case without prejudice so that it could file a revised application as soon as this work is completed. (Exhibit 13.)
7. At its public meeting on July 9, 2012, the Commission considered the Applicant's request, and dismissed the application without prejudice.

CONCLUSIONS OF LAW

Once the Commission receives an application and a report from OP, it must decide whether to schedule a public hearing on the application, or to dismiss the application without a hearing. (11 DCMR § 3011.) This decision is commonly referred to as "setdown." If the Commission dismisses an application without a public hearing, it must issue an order that includes a statement of reasons for the dismissal. (11 DCMR 3011.5.) If the Commission denies or dismisses an application without prejudice, the order shall also state the type of modification the Commission considers appropriate. (11 DCMR § 3011.6.)

In this case, the Applicant voluntarily requested dismissal of the Application to allow it to further develop its plans and to perform community outreach, rather than having to wait six months¹. (See 11 DCMR 3029.2.)

The Commission dismisses the Application without prejudice so that the Applicant can re-file a future application as soon as it is ready, and it does not have to wait six months to do so. In this case, the Commission does not have a particular modification in mind that it would consider

¹ By requesting a dismissal without prejudice, rather than withdrawing the application, the Applicant avoided the prohibition against refiling a similar application for six months. (11 DCMR § 3029.3.)

appropriate. The Commission nonetheless remains concerned about the issues it raised at the July 25, 2011 public meeting, and will look favorably on a revised application that addresses those concerns.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **DISMISSAL WITHOUT PREJUDICE** of the Application.

On July 9, 2012, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **DISMISSED** the application without prejudice at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to deny; third Mayoral appointee position vacant, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on November 2, 2012 .