

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-24D
Z.C. Case No. 15-24D

Gallaudet University and JBG/6th Street Associates, LLC
(Two-Year Time Extension of an Approved Consolidated PUD and Zoning Map
Amendment @ Square 3591, Lot 9 and Square 3593, Lot 6)
June 27, 2024

Pursuant to notice, at its public meeting on June 27, 2024, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of Gallaudet University and JBG/6th Street Associates, LLC (collectively, the “Applicant”) for a two-year time extension of the approved consolidated Planned Unit Development (“PUD”) and Zoning Map amendment approved in Z.C. Order No. 15-24B for the development of three mixed-use buildings with a combined total of approximately 700,000 square feet of new multifamily housing, 67,000 square feet of ground-floor retail space, 17,000 square feet of university space, and 65,000 square feet of public open space (the “Project”) located at Lot 9 in Square 3591 and Lot 6 in Square 3593 (collectively, the “Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedure, 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

Prior Approvals

1. The Property is located in the Florida Avenue Market neighborhood and constitutes Parcels 2 and 3 of the Applicant’s overall four-parcel PUD consisting of Parcels 1-4, located along 6th Street, N.E.
2. The First-Stage approval for the overall PUD was originally approved in Z.C. Order 15-24/15-24A, effective June 23, 2017, which also included a Zoning Map amendment to rezone Parcels 1 and 2 from C-M-1 to the C-3-A zone and to rezone Parcels 3 and 4 from C-M-1 to the C-3-C zone pursuant to the 1958 Zoning Regulations then in effect.
3. The Commission approved Z.C. Order 15-24B (the “Order”), effective August 26, 2022, granting a Modification of Significance for Parcels 1, 2, and 3, and Second-Stage PUD for Parcels 2 and 3, as well as a Consolidated PUD to expand Parcel 2 to include approximately 6,000 square feet of land and a Zoning Map amendment to be consistent with the previously approved PUD map amendment. Under the conditions of the Order,

the Second-Stage PUD application for Parcel 1 is required to be filed by March 28, 2027; construction of Parcels 2 and 3 will precede Parcel 1.

4. The Project will include the development of Parcels 2 and 3. Parcel 2, located on the east side of 6th Street, N.E., is approved for development with two 5-6 story mixed-use buildings that will have a combined total of approximately 240 residential units, 29,000 square feet of ground-floor retail space, and 17,000 square feet of ground-floor university space. Parcel 3, on the west side of 6th Street, N.E., is approved for development with an 11-story mixed-use building with approximately 600 residential units and 38,000 square feet of ground-floor retail space.
5. The Commission approved Z.C. Order 15-24C, effective December 15, 2023, granting a Second-Stage PUD for Parcel 4 to construct a mixed-use building.

Parties and Notice

6. Advisory Neighborhood Commission (“ANC”) 5D, in which the Property is located, and ANC 6C, located to the south of Florida Avenue, N.E. across from Parcel 1 of the PUD, are both “affected ANCs” and automatically parties to the Application. Aside from the affected ANCs, there were no other parties to the original proceeding for Z.C. Case No. 15-24B.
7. On May 21, 2024, the Applicant served the Application on ANC’s 5D and 6C, as well as the Office of Planning (“OP”) and District Department of Transportation (“DDOT”), as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2.)

II. The Application

8. On May 21, 2024, the Applicant filed the Application requesting a two-year time extension of the Order, prior to the expiration of the validity period on August 26, 2024, to extend the PUD and Zoning Map amendment approval. The Applicant requested that it be allowed until August 26, 2026, to file a building permit application for the Project. The Application stated that it met the standards for a time extension enumerated in Subtitle Z § 705.2. (Ex. 2.)
9. The Applicant stated there has been no substantial change of material facts since the Commission’s approval of the Order and that the Project remains consistent with the design and program approved by the Commission. (Ex. 2.)
10. The Applicant asserted that there is good cause to grant the requested extension in this case. Specifically, while the Applicant has advanced the Project toward development, including preparing permit plans and pursuing financing for construction, additional time is required to secure financing due to the ongoing challenges facing the commercial real estate sector, in particular, elevated construction costs and the current shifts in the interest rate environment for financing. (Ex. 2.)

III. Responses to the Application

11. On June 17, 2024, OP submitted a report stating that OP believed the Application met the standards for the requested two-year extension and recommending approval of the Application. OP agreed with the Application 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.)
12. Neither ANC 5D nor ANC 6C submitted a written report in 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, 705.5, and 705.6.
2. The Commission concludes that the Applicant timely filed the Application prior to the expiration of the Order on August 26, 2024, which deadline the Application seeks to extend.
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 5D and ANC 6C, the only other parties to the Order, and that the ANCs were given 30 days to respond from the May 21, 2024, 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 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 relied in issuing the Order that would undermine the Commission's justification for that approval.
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)(1) due to the adverse conditions affecting the financing market for commercial real estate development beyond the Applicant's reasonable control. The Commission agrees that these conditions constitute good cause for the requested two-year extension of the Order.

“Great Weight” to the Recommendations of OP

9. 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).)
10. The Commission notes OP’s conclusion that there has been no substantial change to the material facts upon which the Commission’s original approval was based and finds persuasive OP’s recommendation to approve the requested two-year extension.

“Great Weight” to the Written Report of the ANCs

- 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).)
11. Neither ANC 5D nor ANC 6C submitted a written report 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 Two-Year Time Extension of Z.C. Order No. 15-24B, to extend the validity period and deadline to file a building permit application until August 26, 2026.

VOTE (June 27, 2024): 3-0-2

(Anthony J. Hood, Tammy Stidham, and Robert E. Miller to approve; Joseph S. Imamura not present, not voting; 3rd Mayoral Appointee seat vacant.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 15-24D shall become final and effective upon publication in the *District of Columbia Register*; that is, on August 23, 2024.



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.