

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 18-03B

Z.C. Case No. 18-03B

Dancing Crab Properties, LLC and 10009 Fields Road, Inc.
Two-Year Time Extension for Approved PUD @ Square 1769, Lot 32
(4615 Wisconsin Avenue, N.W.)

March 27, 2025

Pursuant to notice, at its public meeting on March 27, 2025, the Zoning Commission for the District of Columbia (“Commission” or “Z.C.”) considered the application of Dancing Crab Properties, LLC and 10009 Fields Road, Inc. (together, the “Applicant”) for a two-year time extension of the deadline to begin construction of the consolidated planned unit development approved pursuant to Z.C. Order No. 18-03, as extended by Z.C. Order No. 18-03(1) and Z.C. Order No. 18-03A (the “Application”). The Application requested a waiver pursuant to Subtitle Z § 101.9 from Subtitle Z § 705.5’s maximum approval period of one-year for the second time extension of a Commission order. The property subject to the Application is 4615 Wisconsin Avenue, N.W. (Square 1769, Lot 32) (the “Property”).¹

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 (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PRIOR APPROVALS

1. Development of the Property was originally approved pursuant to Z.C. Order No. 18-03, which granted a consolidated PUD and a related Zoning Map Amendment from the MU-4 zone to the MU-5B zone to redevelop the Property with a new mixed-use residential building consisting of (i) approximately 41 residential units, and (ii) a restaurant/bar use to be located on the ground floor and within the penthouse habitable space. Z.C. Order No. 18-03 was approved on December 17, 2018, with an effective date of March 1, 2019.

¹ At the time that Z.C. Order No. 18-03 was issued, the Property was known as Lots 1 and 2 in Square 1769. A subdivision plat was recorded in the Office of the Surveyor on September 30, 2019, at book 216, page 78, which consolidated Lots 1 and 2 into a single record lot that is now known as Lot 32 in Square 1769. Since then, the Property’s address has been changed from 4611–4615 41st Street, N.W. to 4615 Wisconsin Avenue, N.W.

2. Pursuant to Z.C. Order No. 18-03, Decision No. F.2, the order was valid for a period of two years, such that a building permit application was required to be filed no later than March 1, 2021, and construction of the approved PUD was required to commence no later than March 1, 2022.
3. Pursuant to Z.C. Order No. 18-03(1), effective February 5, 2021, the Office of Zoning issued an administrative Covid-19 one-year extension of Z.C. Order No. 18-03, such that the Applicant was required to file a building permit application no later than March 1, 2022, and construction of the approved PUD was required to commence no later than March 1, 2023.
4. The Applicant complied with the first deadline by filing a building permit application, B2203165, for the Property on January 20, 2022 (*See* Z.C. Order No. 18-03A, Findings of Fact No. 4).
5. Pursuant to Z.C. Order No. 18-03A, effective August 25, 2023, the Commission approved the Applicant's request for a two-year time extension of the March 1, 2023, deadline to start construction such that construction of the approved PUD was required to commence no later than March 1, 2025.

PARTIES

6. The parties to Z.C. Case No. 18-03 were the Applicant and Advisory Neighborhood Commission ("ANC") 3E.

II. THE APPLICATION

7. On February 14, 2025, prior to the March 1, 2025, deadline to commence construction of the approved PUD, the Applicant filed the Application requesting a two-year extension of the aforementioned deadline (Exhibit ["Ex."] 1-2F2).
8. The Application asserted that, on February 14, 2025, it satisfied the requirement of Subtitle Z § 705.2(a) to serve all parties and attested by Certificate of Service, included with the Application, that the Applicant served the Application on ANC 3E, ANC Single Member District Commissioner 3E03, ANC Single Member District Commissioner 3E05, the Office of Planning ("OP"), and the District Department of Transportation ("DDOT") (Ex. 2 at 7).
9. The Application asserted that it satisfied the requirements of Subtitle Z § 705.2(b) because no substantial change had occurred in any of the material facts on which the Commission had relied upon in approving Z.C. Order No. 18-03 (Ex. 2).
10. The Application asserted that it satisfied the requirements of Subtitle Z § 705.2(c)(2) for a time extension due to an inability to secure all required governmental agency approvals because of delays in the governmental agency approval process that were beyond the Applicant's control (Ex. 2).

11. The Application asserted that it met the requirements of Subtitle Z § 101.9 for the requested waiver from Subtitle Z § 705.5's maximum approval period of one-year for the second time extension of a Commission order because good cause existed for the waiver due to the significant delays the Applicant experienced which were beyond the Applicant's reasonable control and because granting the waiver would not prejudice the rights of the parties because the Applicant remains fully committed to moving forward with the construction of the approved PUD (Ex. 2).

III. RESPONSES TO THE APPLICATION

OP REPORT

12. OP submitted a report dated March 13, 2025 (the "OP Report"), which recommended approval of the Application based on OP's conclusion that the Applicant had satisfied the relevant standards of Subtitle Z § 705.2 (Ex. 3).

ANC REPORT

13. ANC 3E submitted a resolution on March 24, 2025, titled "Resolution of Support in ZC Case 18-03" (the "ANC Resolution"), which stated that the Applicant had met the standards for a PUD time extension to begin construction of the approved PUD and that "[i]n reliance on the attached MOU [(the "MOU")], which we join the [A]pplicant in asking the ZC to incorporate fully into its order regarding the . . . [A]pplication, ANC 3E supports the [A]pplication." (Ex. 4).
14. The MOU states, in relevant part, provided that ANC 3E supports the Application, the Application agrees to, "[w]ithin ninety (90) days of the Zoning Commission's issuance of an order approving the [Application], the [Applicant] will clean the [Property] by repairing the existing metal fence and by removing the [Property] of gravel, loose concrete, trash, and other similar items." (Ex. 4A).
15. The ANC Resolution stated that it passed by a vote of 6-0-0 at a properly noticed meeting held on March 13, 2025, at which a quorum was present (Ex. 4).

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 demonstrated satisfaction of the requirements of Subtitle Z § 705.2 and upon a determination that the limitations of Subtitle Z §§ 705.3, 705.5, and 705.6 have been adhered to.
2. The Commission concludes that the Applicant timely filed the Application on February 14, 2025, prior to the March 1, 2025, deadline to commence construction of the approved PUD.
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 has satisfied the requirement of Subtitle Z § 705.2(a) to serve all parties by the Applicant's demonstration that the Applicant served

the Application on ANC 3E, ANC Single Member District Commissioner 3E03, ANC Single Member District Commissioner 3E05, OP, and DDOT, and that all parties were given more than 30 days to respond from the February 14, 2025 date of service.

5. Subtitle Z § 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 application that would undermine the Commission's justification for approving the original application.
6. The Commission concludes, based on the Application and the OP Report, that the Application satisfied the requirement of Subtitle Z § 705.2(b) that no substantial change in any of the material facts upon which the Commission based its original approval of Z.C. Case No. 18-03 occurred 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:
 - a. *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;*
 - b. *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*
 - c. *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)(2) because the Application demonstrated that the Applicant had taken many steps to move construction of the approved PUD forward, including applying and receiving raze permits to demolish the existing structures on the Property, timely filing for a building permit application, submitting a variety of other permits, such as a permit for bay window projections and a public space permit, preparing and recording the required PUD Covenant, submitting a draft Inclusionary Zoning Covenant and Certificate of Inclusionary Zoning Compliance, submitting an Environmental Impact Screening Form Application, posting notice signs on the Property regarding the building permit, submitting an application for an Excavation Sheeting and Shoring permit, and responding to comments from District reviewing disciplines as part of the permitting process, but that despite these efforts, the Applicant has been unable to secure all required governmental agency approvals to begin construction. Further, the Commission concludes that these delays were beyond the Applicant's reasonable control and have prevented the Applicant from complying with the deadline to commence construction of the approved PUD.
9. Subtitle Z § 705.5 requires that a second PUD extension request may be approved for no more than one (1) year.

10. Subtitle Z § 101.9 authorizes the Commission to waive any of the provisions of Subtitle Z if, in the judgment of the Commission, the Applicant demonstrates good cause for the waiver and the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.
11. The Commission concludes that the Application met the requirements of Subtitle Z § 101.9 for the requested waiver from Subtitle Z § 705.5's maximum approval period of one-year for the second time extension of a Commission order because good cause existed for the waiver due to the significant delays the Applicant experienced which were beyond the Applicant's reasonable control and because granting the waiver would not prejudice the rights of the parties because the Applicant remains fully committed to moving forward with the construction of the approved PUD.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

12. The Commission must 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 § 405.9. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016))
13. The Commission found OP’s recommendation that the Commission approve the Application persuasive and concurs in that judgment.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF THE ANC

14. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public 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. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted)).
15. The Commission found ANC 3E’s resolution in support of the Application persuasive and concurs in that judgment.

DECISION

In consideration of the case record, the Findings of Fact, and the 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 the March 1, 2025, deadline to commence construction of the PUD approved pursuant to Z.C. Order No. 18-03, as extended by Z.C. Order No. 18-03(1) and by Z.C. Order No. 18-03A, such that construction of the

approved PUD must commence no later than March 1, 2027. This approval is subject to the following condition:

1. Within ninety (90) days of the Zoning Commission's issuance of this Order, the Applicant shall clean the Property by repairing the existing metal fence and by removing the Property of gravel, loose concrete, trash, and other similar items.

Final Action

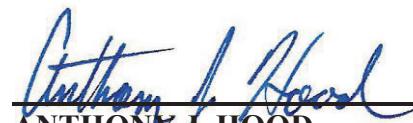
VOTE (March 27, 2025): 5-0-0

(Joseph S. Imamura, Gwen Wright, Anthony J. Hood, Robert E. Miller, Tammy Stidham to approve.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 18-03B shall become final and effective upon publication in the *District of Columbia Register*; that is, on April 25, 2025.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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



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.