

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER 22-04A**

Z.C. Case No. 22-04A

**Captain Reed 2640, LLC, Trolley Lot, LLC, FR 828 Evarts NE, LLC, Eagle 901, LLC, and
Franklin & Rocky Properties, LLC**

**(Two-Year Time Extension for Approved Consolidated PUD
and Related Map Amendment @ Squares 3846 and 3841)**

October 24, 2024

Pursuant to notice, at its public meeting on October 24, 2024, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (“Application”) of Captain Reed 2640, LLC, Trolley Lot, LLC, FR 828 Evarts NE, LLC, Eagle 901, LLC, and Franklin & Rocky Properties, LLC (collectively, the “Applicant”) for a two-year extension of the time period to file a building permit application and begin construction of a planned unit development (“PUD”) approved for certain property located in Squares 3846 and 3841 (the “Property”) pursuant to Zoning Commission (Z.C.) Order No. 22-04, effective as of February 23, 2023 (the “Order”).

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, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

The Property

1. The Property is located in the Northeast quadrant of the District in Ward 5, and in the southeastern portion of the Brookland neighborhood. The Property has a total land area of approximately 156,742 square feet, generally located on the south side of Franklin Street, N.E. bounded by the WMATA tracks to the west and a north-south public alley on the east (which is located to the west of 10th Street, N.E.).
2. A portion of Reed Street (Alley), N.E., as well as other public alleys, previously traversed through the PUD Site, but were closed by virtue of the Reed Street Realignment Act of 2023 (DC Law No. 25-15).
3. At the time of filing the Application, the Applicant was processing two separate subdivision plats to establish two new record lots on the Property, which would enable redevelopment of the Property in accordance with the Order.

Prior Zoning Commission Approval / The Project

4. Pursuant to the Order, the Commission approved a Consolidated PUD and a PUD-related map amendment from the PDR-2 to the MU-6A and MU-4 zones. The approval allows the construction of a new, mixed-use development comprised of two buildings (with three massings), generating approximately 683 new residential units (the “Project”).
5. The Project will devote approximately 22,159 square feet to PDR/makerspace use, including non-residential use and three affordable artist live-work units reserved for local artists with a maximum Median Family Income not exceeding 60%. The Project will also provide various outdoor amenities including courtyard spaces, swimming pools, outdoor dining and fire features, and private patios.

Phasing

6. The Project is to be delivered in two phases, with Reed Street being realigned to bifurcate the overall Project and extend to Franklin Street. The building to the west of the realigned Reed Street will consist of the “Phase I Building” and the “Phase II-B Building” (together, the “West Building”). The “Phase II-A Building” is the building located to the east of Reed Street.
7. The first phase of the Project includes the construction of the Phase I Building (“Phase I”).
8. The second phase of the Project includes the construction of the Phase II-A Building (“Phase II-A”) and the Phase II-B Building (“Phase II-B”, and together with Phase II-A referred to as “Phase II”).

Current Deadlines Under the Order

9. The Order establishes the current deadlines of the PUD, which are organized by the two phases of the PUD, as follows:
 - Decision L.2: Approval of Phase I of the Project is valid for a period of two years from the effective date of the Order. Within that time, the Applicant must file a building permit application for Phase I. The Applicant must also begin construction of Phase I within three years of the effective date the Order; and
 - Decision L.3: Approval of Phase II-A and Phase II-B of the Project are valid for a period of two years following issuance of the first Certificate of Occupancy for Phase I. Within that time, the Applicant must file building permit applications for both Phase II-A and Phase II-B. The Applicant must also begin construction of both Phase II-A and Phase II-B within three years of issuance of the first Certificate of Occupancy for Phase I.
10. Accordingly, a building permit for Phase I of the Project must be filed no later than February 24, 2025, and construction must begin no later than February 24, 2026. The deadlines for Phases II-A and II-B are contingent upon when the first certificate of occupancy for Phase I is issued.
11. Decision L.4 of the Order further provides that if no certificate of occupancy for Phase I is issued within seven years following the effective date of the Order, the entire PUD approval

will expire, unless otherwise extended by the Commission. Accordingly, if no certificate of occupancy is issued for Phase I by February 24, 2030, the approved PUD will expire.

Parties and Notice

12. The parties to the original application were the Applicant and Advisory Neighborhood Commission (“ANC”) 5B, the ANC in which the Property was located at the time of the original approval, and thus the “affected” ANC pursuant to Subtitle Z § 101.8. On January 1, 2023, the boundaries of the District’s ANCs were modified, however the Property remains within the boundaries of ANC 5B.
13. On September 13, 2024, the Applicant served the Application on ANC 5B, thus providing the ANC with sufficient time to respond, as required by Subtitle Z § 705.2(a). The Applicant also served the Office of Planning (“OP”) and the District Department of Transportation (“DDOT”), as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2)

II. THE APPLICATION

14. On September 13, 2024, the Applicant timely filed the Application requesting a two-year time extension of the validity of the Order, such that if approved the Applicant would be required to file a building permit application for Phase I no later than February 24, 2027, and start construction on Phase I no later than February 24, 2028. Additionally, if no certificate of occupancy is issued for Phase I by February 24, 2032, the approved PUD would expire. (Ex. 1-2J)
15. The Application asserted that it met the requirements under Subtitle Z § 705.2 for the proposed two-year time extension because:
 - The Applicant served the extension request on all parties to the underlying application and all parties were allowed 30 days to respond;
 - There has been no substantial change in any material facts upon which the Commission based its original approval of the Order;
 - Good cause justifies the Commission’s granting of the time extension because of the Applicant’s inability to obtain and retain sufficient project financing despite its diligent good faith efforts to obtain such financing, and because of changes in economic and market conditions beyond the Applicant’s reasonable control. The Application stated that following issuance of the Order in February of 2023, impacts to the real estate market associated with the Covid-19 pandemic were ongoing and in many ways worsening. The market overall was plagued with high construction costs, insufficient labor, and supply chain issues. Inflation was high throughout the country, which led to tightened credit, increased borrowing costs, heightened market uncertainty, and a weak lending market. The Application further asserted that these conditions collectively created an inhospitable market for multi-family residential development in the District, and that such pattern continued as follows:
 - Construction costs, including raw materials, building systems, and labor rates, increased at such a significant rate that the Applicant cannot initiate, let alone finalize construction drawings, until a more stable supply chain is reestablished;

- Aggressive interest rate hikes by the Federal Reserve resulted in heightened market uncertainty, increased borrowing costs, and tightened credit, collectively putting downward pressure on lending activity;
 - Adverse lending conditions have stalled multi-family housing starts and severely hampered new construction activities in the District;
 - The effects of the Covid-19 pandemic on the District are also evidenced by plateauing rents, increased vacancy rates, stunted population growth, and a massive shift from in-person work to working from home, making other, more cost-friendly areas (both regionally and nationally) more feasible and competitive; and
 - New and competing apartment buildings have opened in surrounding neighborhoods, resulting in a lack of demand for additional new multi-family housing at the targeted dates of completion of the Project.
 - In addition to and as a result of the above-described economic factors, the Applicant's original development partner was unable to stay involved with the Project.
16. For the foregoing reasons, the Application stated that the Applicant has been unable to obtain financing for the Project and move forward with filing the building permit application by the deadline established in the Order. (*See* Affidavit of Jack Sarf, the managing member of all the limited liability companies comprising the Applicant (the "Affidavit").) (Ex. 2A)
17. Despite the setbacks described above and stated in the Application, the Application further explained how the Applicant continued to move the Project forward by:
- Finalizing a Horizontal Public Use Agreement with DDOT that will govern the realignment and redesign of Reed Street, N.E., as required by Condition K.1 of the Order;
 - Recording the alley closing and street dedication plat that effectuated the DC Council's approval of the "Reed Street Realignment Act of 2023"; (Ex. 2E)
 - Submitting five raze permit applications to remove existing industrial buildings on the Property, all of which should be removed by Q1 of 2025; and
 - Processing two subdivision applications with the Office of the Surveyor for the District of Columbia, which will establish two new record lots on the Property that will flank Reed Street, N.E., and enable construction of the Project in accordance with the Order. (Ex. 2F)
18. The Application further stated that the Applicant hoped to secure a new development partner within the next year, who would be of comparable experience and ability to deliver the Project as approved. Assuming the Applicant is successful in doing so, and as soon market conditions allow, the Property should be "shovel-ready", and the delivery of the Project can get underway. In the coming months, the Applicant intends to actively work with its design team to evaluate the viability of the currently designed Project and move forward with construction drawings based on the outcome of that evaluation.

III. RESPONSES TO THE APPLICATION

19. OP submitted a report dated October 8, 2024, (Ex. 4) (the “OP Report”) which recommended approval of the Application. The OP Report concluded that (i) the extension was properly served on all parties, which were given 30 days to respond; (ii) there had 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.
20. The Applicant’s Statement in Support (Ex. 2) indicated that on August 28, 2024, the Applicant met with the Single Member District (“SMD”) representative for ANC 5B04 and explained the above-described market challenges and the benefit of having an approved time extension. At the time of filing, the Applicant also indicated that it would present the Application at an SMD meeting in September 2024, and the Applicant anticipated that it would present the Application to the full ANC on October 16, 2024. ANC 5B did not submit a written report to the case record; however, the ANC received notice of the application in accordance with Subtitle Z § 705.2(a).

CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the time period of an order upon determining that the time extension request demonstrated 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-in this case ANC 5B- on September 13, 2024, and that the parties were given 30 days to respond from September 13, 2024.
4. 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.
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 Order that would undermine the Commission’s justification for approving the Order.
6. 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.*
7. The Commission concludes, based on the Application and the OP Report, that the Application meets the standards of Subtitle Z §§ 705.2(c)(1) and (3) because the Project suffered significant disruption due to impacts to the real estate market associated with the aftermath of the Covid-19 pandemic, which worsened after issuance of the Order. As set forth in the Application, these impacts included high construction costs, insufficient labor, supply chain issues, inflation and tightened credit, increased borrowing costs, and a weak lending market, all of which resulted in the Applicant being unable to obtain project financing. In addition to and as a result of economic factors, the Applicant's original development partner was unable to stay involved with the Project, and the Applicant's search for a new development partner of comparable experience and ability is ongoing. Thus, the Commission concludes that, because of economic and market conditions beyond the Applicant's reasonable control, compliance with the Order's time limits is unachievable for the Applicant. Accordingly, the Commission finds that the Applicant needs additional time to move forward with the Project.

“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 § 405.9. (*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*, 141 A.3d 1087) 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 5B did not submit a report to the case record to which the Commission can give great weight. (Finding of Fact No. 20)

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 deadline to file a building permit application and begin construction of Phase I of the Project, with the requirement that the Applicant:

- File a building permit application for Phase I of the Project no later than **February 24, 2027**; and
- Begin construction of Phase I of the Project no later than **February 24, 2028**.

Furthermore, as a result of the Commission’s approval herein, the phasing and validity for the Project is now conditioned as follows:

- Approval of Phase II-A and Phase II-B of the Project shall **remain** valid for a period of two years following issuance of the first Certificate of Occupancy for Phase I. Within that time, the Applicant shall file building permit applications for both Phase II-A and Phase II-B. The Applicant shall begin construction of both Phase II-A and Phase II-B within three years of issuance of the first Certificate of Occupancy for Phase I; and
- If no Certificate of Occupancy for Phase I is issued by **February 24, 2032**, the approval shall expire, unless otherwise extended by the Zoning Commission.

VOTE (October 24, 2024): 4-0-1

(Robert Miller, Joseph Imamura, Anthony J. Hood and Tammy Stidham to approve; Gwen Marcus Wright not having participated, not voting)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 22-04A shall become final and effective upon publication in the *District of Columbia Register*, that is, on December 27, 2024.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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



ANTHONY 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 RESIDENT 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.