

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 18-03A
Z.C. CASE NO. 18-03A

**Dancing Crab Properties, LLC & 10009 Field Road, Inc.
(Two-Year PUD Time Extension @ Square 1769, Lot 32)**
March 30, 2023

Pursuant to notice, at its public meeting on March 30, 2023, the Zoning Commission for the District of Columbia (the “Commission”) considered an application of Dancing Crab Properties, LLC and 10009 Field Road, Inc. (together, the “Applicant”) for a two-year time extension of the March 1, 2023, deadline to start construction of the planned unit development (“PUD”) located at 4611-4615 41st Street, N.W. (Square 1769, Lot 32) (the “Property”)¹ and approved pursuant to Z.C. Order No. 18-03, as extended by a Covid-19 one-year extension approved in Z.C. Order No. 18-03(1) (the “Application”).

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, effective March 1, 2019, which granted a consolidated PUD and a related Zoning Map Amendment from the MU-4 zone to the MU-5-B zone to develop the Property with a new mixed-use residential building consisting of approximately 41 residential units and restaurant/bar use on both the ground floor and penthouse habitable space.
2. Decision No. F.2 of Z.C. Order No. 18-03 required the Applicant to file a building permit application no later than March 1, 2021, and start construction 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

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. (Ex. 2.)

the Applicant was required to file a building permit application no later than March 1, 2022, and start construction no later than March 1, 2023.

4. The Applicant complied with the first deadline by filing a building permit application, Permit No. B2203165, for the Property on January 20, 2022, as documented by an affidavit submitted with the Application. (Exhibit [“Ex.”] 2E.)

PARTIES

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

II. THE APPLICATION

6. On February 17, 2023, prior to the March 1, 2023 deadline to commence construction of the approved PUD, the Applicant filed the Application requesting a two-year extension of the aforementioned deadline to begin construction of the approved PUD. (Ex. 1-2E.)
7. The Application asserted that it satisfied the requirement of Subtitle Z § 705.2(a) to serve the extension request on all parties as attested by the Certificate of Service included with the Application, which stated that the Applicant served the Application on ANC 3E, ANC Single Member District Commissioner 3E05, the District Department of Transportation (“DDOT”), and the Office of Planning (“OP”) on February 17, 2023. (Ex. 2.)
8. 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.)
9. 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. The Application asserted that the Applicant has taken many steps to move the PUD project forward, including preparing and recording the required PUD covenant, applying for and obtaining raze permits to demolish the existing structures on the Property, and applying for and responding to comments from District agencies as part of the building permit process. (Ex. 2.)

III. RESPONSES TO THE APPLICATION

OP REPORT

10. OP submitted a report on March 16, 2023 (Ex. 5) (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. The OP Report noted that the Property’s designation on the Comprehensive Plan Future Land Use Map had changed from Mixed Use: Medium Density Residential / Moderate Density Commercial to Mixed Use: High Density Residential / Medium Density Commercial in 2021 and that the PUD remains not inconsistent with this updated designation. (Ex. 5.)

ANC REPORT

11. ANC 3E submitted a resolution on March 16, 2023, titled “Resolution of Support in ZC #18-03, 4611-4615 41st Street, N.W.” (Ex. 6) (the “ANC Resolution”), which stated that the Application appears to demonstrate that the Applicant had met the standards for a PUD time extension to begin construction and that the “project and amenities that will be delivered... will provide significant benefit to the community, and, given that the site has been vacant for several years, the ANC hopes and expects construction will begin soon.” (Ex. 6, p. 2.)
12. The ANC Resolution stated that it passed by a vote of 8-0-0 at a properly noticed meeting held on March 9, 2023, at which a quorum was present. (Ex. 6, p. 2.)

CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the time period of an order approving a PUD for good cause 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 17, 2023, prior to the March 1, 2023 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 demonstration that the Applicant served the only other party to Z.C. Case No. 18-03, which was ANC 3E, and that the ANC was given more than 30 days to respond from the February 17, 2023, date of service and did respond by filing the ANC Resolution.
5. 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.
6. The Commission concludes, based on the Application and the OP Report, that the Application met the standard of review of Subtitle Z § 705.2(c)(2) because the Application demonstrated that the Applicant had taken many steps to move the project forward, including preparing and recording the required PUD Covenant, applying for and obtaining raze permits to demolish the existing structures on the Property, and applying for and responding to comments from District reviewing disciplines as part of the building permit process, but that despite these efforts, the Applicant was unable to secure all required governmental agency approvals to pull the final building permit and begin construction.

These delays were beyond the Applicant's reasonable control and prevented the Applicant from complying with the deadline to commence construction of the approved PUD.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

7. 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 § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
8. The Commission found OP's recommendation that the Commission approve the Application persuasive and concurs in that judgment.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

9. 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).)
10. 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, 2023, deadline to start construction of the PUD approved pursuant to Z.C. Order No. 18-03, as extended by 18-03(1).

VOTE (March 30, 2023): 4-0-1

(Anthony J. Hood, Joseph S. Imamura, Robert E. Miller and Peter G. May to **APPROVE**; 3rd Mayoral Appointee position vacant, not voting.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 18-03A shall become final and effective upon publication in the *D.C. Register*; that is, on August 25, 2023.



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.