

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 20-06C
Z.C. Case No. 20-06C
Felice Development Group
(Two-Year Time Extension for Approved Planned Unit Development @
Square 1048-S, Lot 2 (1333 M Street, S.E.))
January 26, 2023**

Pursuant to notice, at its public meeting on January 26, 2023, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of Felice Development Group (“Applicant”) for a two-year time extension for the planned unit development (“PUD”) approved by Z.C. Order No. 20-06, as modified by Z.C. Order Nos. 20-06A and 20-06B (the “Approved PUD”). The property (Lot 2 in Square 1048-S)¹ has a street address of 1333 M Street, S.E. (“Property”). 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

PRIOR APPROVALS

1. Pursuant to Z.C. Order No. 20-06, effective April 23, 2021 (the “Original Order”), the Commission approved a Consolidated PUD, First Stage PUD, and related Zoning Map amendment from the PDR-4 zone to the MU-9 zone for the Property. The Original Order authorized the construction of a mixed-use project consisting of approximately 786,160 square feet of gross floor area (“GFA”), yielding approximately 900 dwelling units; and approximately 44,092 square feet of GFA for non-residential use; and 174 vehicle parking spaces (the “Project”).
2. Pursuant to the Original Order, the Project is to be constructed in phases. The first phase, which is the Consolidated PUD, involves the construction of the East Tower (also known as Building 1-East Tower). The subsequent phase(s) include the construction of the West Tower (also known as Building 1-West Tower) and Building 2, which are the subjects of the First Stage PUD approval. The East Tower and West Tower will be connected via an elevated bridge and, together, comprise Building 1.

¹ At the time of the original PUD approval, the Property consisted of Lot 802 in Square 1025E; Lots 1, 801, and 802 in Square 1048S; and Reservation 129-299. These lots have since been subdivided into a single record lot, i.e., Lot 2 in Square 1048-S.

3. Pursuant to Z.C. Order No. 20-06A, effective October 7, 2022, the Commission approved a technical correction to the Original Order to correct the development table provided in Finding of Fact No. 31.
4. Pursuant to Z.C. Order No. 20-06B, effective April 7, 2023, the Commission approved a Modification of Consequence to the Original Order that permitted various modifications to the PUD including, but not limited to, shifting the eastern boundary of Theoretical Lot 1, adjusting boundaries for the Consolidated PUD and the First-Stage PUD, and increasing the vehicle parking for the Project. The Commission also approved corresponding changes to several conditions in the Original Order, including additional transportation mitigation measures in light of the approved increase in vehicle parking.
5. Condition E.2 of the Original Order required the Applicant to file for a building permit by April 23, 2023, with construction to commence no later than April 23, 2024.

PARTIES AND NOTICE

6. In addition to the Applicant, the only other party to the Original Order was Advisory Neighborhood Commission (“ANC”) 6B, the “affected” ANC pursuant to Subtitle Z § 101.8.
7. On December 21, 2022, the Applicant served the Application on ANC 6B, as well as the Office of Planning (“OP”), as attested by the Certificate of Service submitted with the Application. The Applicant also provided a copy of the Application to the District Department of Transportation. (Exhibit [“Ex.”] 2.)

THE APPLICATION

8. On December 21, 2022, the Applicant timely filed the Application requesting a two-year time extension of the validity of the Original Order, specifically:
 - To file a building permit application to construct the PUD no later than April 23, 2025; and
 - To start construction of the PUD no later than April 23, 2026.(Ex. 2.)
9. The Application asserted that it met the requirements, under Subtitle Z § 705.2, for the proposed two-year time extension because:
 - There has been no substantial change in any material facts upon which the Commission based its original approval; and
 - Good cause justifies the Commission’s granting the time extension because the PUD has been affected by external events, including:
 - The pandemic and resulting public health emergency, which severely disrupted traditional brick-and-mortar retail and limited the range of prospective tenants for the Project;
 - The existing state of the market and its supply chain disruptions, labor shortages, and inflation; and

- The challenge of securing capital to finance the Project given both of the above cited factors, in addition to recently elevated interest rates.
10. The Applicant also submitted the affidavit of Larry Clark, VP of Felice Development Group, attesting to the challenges that justify the time extension. (Ex. 2C.)

RESPONSES TO THE APPLICATION

11. OP submitted a report dated January 19, 2023, recommending approval of the Application, and concluding there were not substantial changes to the material facts upon which the Commission based its original approval of the Order. OP also acknowledged that pandemic-related delays, coupled with the current state of the market, have prompted the Applicant to pursue modifications that place a greater emphasis on residential use. (Ex. 4.)
12. ANC 6B did not submit a written report commenting on the Application.

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 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 has satisfied Subtitle Z 705.2(a) by demonstrating that it served all parties, which in this case is only ANC 6B, on December 21, 2022, and that ANC 6B was given 30 days to respond from December 21, 2022.
4. Subtitle § 705.2(b) requires that the Commission find that no substantial change has occurred to any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the PUD.
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 PUD that would undermine the Commission's justification for that approval.
6. 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 government agency approvals for a development by the expiration date of the PUD 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.*
- 7. The Commission concludes that the Application meets the standards of Subtitle Z § 705.2(c)(1) and 705.2(c)(3) because the Project has suffered significant disruption and financial loss due to the pandemic. The ongoing uncertainty surrounding traditional retail uses has raised unforeseen challenges and has prompted subsequent modifications to the Project that place a greater emphasis on its residential component and adapt to market realities. Furthermore, inflation, supply chain delays, and labor shortages that characterize the current economic climate have burdened the financing of the Project. These pandemic-related effects, beyond the Applicant's reasonable control, made financing of the Project and compliance with the original time limits of the Order unachievable.

“GREAT WEIGHT” TO THE RECOMMENDATIONS 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 § 405.8. (*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(S)

- 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 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. District of Columbia Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted).)
- 11. ANC 6B did not file a written report to which the Commission can give great weight. (Finding of Fact No. 12.)

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. 20-06, with the requirement that the Applicant:

- File a building permit application to construct the Approved PUD no later than **April 23, 2025**; and
- Begin construction of the Approved PUD no later than **April 23, 2026**.


VOTE (January 26, 2023): 4-0-1

(Anthony J. Hood, Robert E. Miller, Peter G. May, and Joseph S. Imamura to **APPROVE**; third Mayoral appointee seat vacant)


In accordance with the provisions of Subtitle Z § 604.9, this Order No. 20-06C shall become final and effective upon publication in the *DC Register*, that is, on April 28, 2023.

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 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.