

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 13-05C**  
**Z.C. Case No. 13-05C**  
**Forest City Washington**  
**(PUD Time Extension @ Square 744S, Lots 808 and 812)**  
**February 26, 2018**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on February 26, 2018. At that meeting, the Commission approved the application (“Application”) of Forest City Washington (“Applicant”) for a time extension in which to file a building permit application for the consolidated planned unit development (“PUD”), approved by Z.C. Order No. 13-05 (“Initial Order”), until February 7, 2019. The property (Square 744S, Lots 808 and 812<sup>1</sup> [the “Property”]) that is the subject of this Application is bordered by N Place, S.E. on the north, 1<sup>st</sup> Street, S.E. on the west, the Anacostia River on the south, and property used by DC Water operations on the east. The time extension request was made pursuant to Chapter 7 of Title 11, Subtitle Z of the District of Columbia Code of Municipal Regulations.

**FINDINGS OF FACT**

**BACKGROUND INFORMATION**

1. The Initial Order included both a consolidated PUD approval and a first-stage PUD approval. The consolidated PUD approved in the Initial Order, which became final and effective on February 7, 2014, authorized the construction of a movie theater and parking garage structure on the Property, which is the northeast portion of the overall PUD site (such property known as the “F1 Parcel”). The consolidated PUD approval was originally effective for two years from the effective date of the Initial Order (that is, until February 7, 2016), and extended for a period of two years (that is, until February 7, 2018) pursuant to Z.C. Order No. 13-05A (the “First Extension”). The Commission approved modifications to the consolidated PUD pursuant to Z.C. Order No. 13-05B, which became effective as of November 25, 2016.

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<sup>1</sup> The Initial Order was approved for portions of Lot 805 in Square 744S and Lot 801 in Square 744S. Pursuant to an approved Division of Lots application, Lot 805 has been divided into separate assessment and taxation lots, and the Property is now known as Lots 808 and 812.

2. The first-stage PUD approval also in the Initial Order included three additional parcels located along 1<sup>st</sup> Street, S.E. and known as the G1, G2, and G3 Parcels, which will be developed with a mix of residential and retail uses. The first-stage PUD approval is effective for 12 years from the effective date of the Z.C. Order No. 13-05 (that is, until February 7, 2026).
3. The Initial Order also authorized the PUD-related rezoning of the Property from the CG/W-2 Zone District to the CG/CR and CG/W-1 Zone Districts. (The entirety of the F1 Parcel was rezoned to the CG/CR Zone District.)
4. The Property is owned by the District of Columbia and has been used by DC Water for various operations related to its utility service.
5. On January 16, 2018, the Applicant filed a request asking that the Commission grant a one-year time extension in which the Applicant was required to file a building permit application for the consolidated PUD. (Exhibit [“Ex.”] 1.)
6. The Applicant served the extension request on the two parties to the initial PUD proceeding, Advisory Neighborhood Commission (“ANC”) 6D and DC Water. (Ex. 1 at 6.) The Commission provided both parties at least 30 days to respond. The Applicant presented the Application to the ANC at the ANC’s January 8, 2018 public meeting, and the ANC unanimously supported the Application. (Ex. 1 at 4.) The ANC filed a letter in support of the extension dated January 28, 2018. (Ex. 5.) DC Water did not respond.
7. There has been no substantial change in any material facts upon which the Commission based its original approval of the Initial Order with respect to the consolidated PUD. (Ex. 1 at 4.) Since the Initial Order was approved, the Zoning Regulations have been amended and other development in the vicinity of the Property has proceeded (*see* Ex. 5 at 2), but both items were contemplated at the time of the Initial Order.
8. The Applicant’s inability to file a building permit under the consolidated PUD within the requisite time period is a result of factors beyond the direct control of the Applicant. In a signed affidavit, the Applicant indicated that since the approval of the PUD, the Applicant proceeded diligently and in good faith to realize the Project. (Ex. 1D.) Actions taken included: negotiating and entering into a lease with the theater operator; modifying the design of the Project to accommodate the needs of the theater operator; negotiating and executing a Land Disposition Agreement with the District of Columbia, and securing approval from the DC Council for the same; working with the Deputy Mayor for Planning and Economic Development (“DMPED”) and DC Water on the relocation of the existing DC Water operations on the Property to another location, which relocation is required in order to effectuate the PUD; negotiating and reaching agreement with DMPED and DC Water on DC Water operational matters that will remain on DC Water-owned property adjacent to the Property. (*Id.*)
9. The Applicant explained that it has worked diligently and closely with DMPED and DC Water to finalize and fund the relocation activities that are necessary to move DC Water operations off the Property. The District completed the acquisition of two relocation sites

for DC Water and secured funding for DC Water's construction of and relocation onto such new locations. The D.C. Council approved the funding for such relocation activity on December 18, 2017 and a funding agreement between the District and DC Water was executed in January 2018. Such relocation activities were not within the Applicant's control but instead must be undertaken by DMPED and DC Water. The Applicant explained that it helped manage the process between the District and DC Water and took the lead in drafting many of the required agreements necessary for the DC Water relocation efforts. (Ex. 1, 1D.)

10. The Applicant indicated that since the date of the Initial Order, it had expended approximately \$4,259,676 on the negotiation of the theater lease and LDA, refinement of the design of the F1 Parcel, assistance in DC Water relocation efforts, and negotiation and execution of site coordination, construction, and operational agreements with DMPED and DC Water. (Ex. 1D.)
11. The Applicant explained that the additional time would allow the Applicant to finish the design and permitting needed to move forward with the development of the F1 Parcel. (Ex. 1 at 4.)
12. DMPED filed a letter in support of the requested one-year extension. (Ex. 4.) The Office of Planning ("OP") noted in its report that the situation leading to the delay in the Applicant's pursuing a building permit was beyond the Applicant's reasonable control and supported the request for the extension. (Ex. 5 at 2.)

### **CONCLUSIONS OF LAW**

The Commission may extend the time period of an approved PUD provided the requirements of 11-Z DCMR § 705.2 are satisfied. The Application was made in writing prior to the expiration of the First Extension. Subsection 705.2(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The parties in Z.C. Case No. 13-05 were ANC 6D and DC Water (previously known as the DC Water and Sewer Authority). ANC 6D and DC Water were each properly served with this time extension request and ANC 6D submitted a letter evidencing its support for this Application.

Subsection 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 of the PUD that would undermine the Commission's justification for approving the original PUD. Based on the information provided by the Applicant and the analysis from OP, the Commission concludes that extending the time period of approval for the consolidated PUD is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the consolidated PUD application that were not contemplated at the time of the Initial Order.

Section 705.2 requires that the applicant demonstrate with substantial evidence that there is a good cause for the proposed extension, and identifies in § 705.2(c) three scenarios that satisfy such good cause requirement:

- (1) An inability to obtain sufficient project financing for the PUD, 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 PUD 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 PUD order.

The Commission finds that the Applicant demonstrated good cause to extend the period of time in which the Applicant is required to file a building permit application for the F1 Parcel/consolidated PUD component of the Initial Order. The time needed to relocate DC Water's operations is beyond the Applicant's reasonable control, has rendered the Applicant unable to comply with the time limits of the PUD order for the consolidated PUD, and has caused the Applicant's inability to secure all required governmental agency approvals. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11-Z DCMR § 705.2 regarding the application for a time extension of the consolidated PUD.

The Commission is required under § 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)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC. As noted above, ANC 6D was properly served with this time extension request but did not raise any issues or concerns other than to express its support for the Application.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations. The Commission gives the requisite weight to OP's report in support of the Application.

### **DECISION**

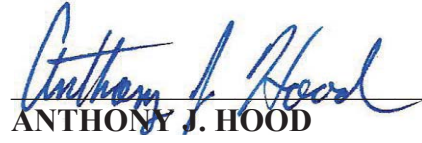
In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a time extension of the consolidated PUD approved in Z.C. Order No. 13-05, as previously extended by Z.C. Order No. 13-05A and modified by Z.C. Order No. 13-05B. The consolidated PUD approved by the Commission shall be valid until February 7, 2019, within which time the Applicant will be required to file a building permit application to construct the approved consolidated PUD, and construction of the consolidated PUD must start no later than February 7, 2020.

On February 26, 2018, upon motion by Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register* on May 11, 2018.


**BY THE ORDER OF THE D.C. ZONING COMMISSION**

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



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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**



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**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**