GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-04B
Z.C. CASE NO. 06-04B
(Florida & Q Street, LLC – Two-Year PUD Time Extension @ Square 3100, Lot 48)
July 11, 2011

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on July 11, 2011. At the meeting, the Commission approved a request from Florida & Q Street, LLC ("Applicant") for a time extension for an approved planned unit development ("PUD") for property consisting of Lot 48 in Square 3100 ("Subject Property") pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations ("DCMR").

FINDINGS OF FACT

1. Pursuant to Z.C. Order No. 06-04, the Commission approved a PUD for the Subject Property and an application for a related Zoning Map amendment from the C-2-A to the C-2-B Zone District for the Subject Property. The Subject Property consists of approximately 18,984 square feet of land area.

2. The approved PUD includes construction of a mixed-use development having a combined gross floor area of approximately 85,428 square feet, and two levels of underground parking. Approximately 81,428 square feet will be residential providing between 65-85 dwelling units and a total of 4,970 square feet of floor area will be provided for retail use in the cellar. The project will have an approximate density of 4.5 floor area ratio ("FAR") and a maximum building height of approximately 86 feet at the corner of North Capitol Street and Florida Avenue, with setbacks at the 65-foot level on all street fronts. Access to the parking garage and the loading dock area will be from Florida Avenue.

3. Pursuant to Z.C. Order No. 06-04A, which became final and effective on June 12, 2009, the Commission approved the validity of Z.C. Order No. 06-04 for a period of two years, such that a building permit application for the PUD must be filed no later than June 15, 2011, and construction must start no later than June 15, 2012.

4. By letter dated and received by the Commission on May 13, 2011, the Applicant filed a request to extend the validity of the PUD approval for a period of two years, such that a

building permit application must be filed no later than June 15, 2013 and construction must start no later than June 15, 2014. The Applicant's request was supported by an affidavit signed by the Applicant's representative, and a letter from the Applicant's broker setting forth details of the Applicant's inability to obtain project financing for the approved building.

5. The Applicant submitted evidence that that project has experienced delay beyond the Applicant's control. The Applicant indicated that since the PUD was initially approved, the Applicant has worked diligently to secure financing for the project, and has met with numerous potential lenders and other financing sources, but has been unable to secure financing or a joint venture partner due to the volatility in the industry. The Applicant also indicated that it has been faced with the following impediments in attempting to obtain financing for the project: (a) construction costs for the project have increased significantly since the PUD was approved; (b) the Applicant has meet with a number of lenders, yet these efforts have not yielded financing for the project because market conditions and construction cost have continued to increase at an unpredictable rate; and (c) a number of the banks that the Applicant initially contacted for financing the project have either frozen lending for residential projects or have ceased lending operations due to the uncertainty in market conditions and the softening of the housing market.

6. By letter dated and received by the Commission on June 27, 2011, the Applicant submitted a copy of a "No Further Action Letter" issued by the District Department of the Environment ("DDOE Letter") in January 2011. The Applicant indicated that issuance of the DDOE Letter is one of the key steps required for moving forward with development of the project and will make it less difficult for the Applicant to secure financing for the approved project. In addition, by letter dated and received by the Commission on July 6, 2011, the Applicant submitted information indicating the specific investors and developers that the Applicant contacted regarding the project; an expense analysis indicating the amount of money the Applicant has invested in the property since 2005; and information describing a number of environmental assessment and remediation efforts taken since the PUD was initially approved in order to allow the safe use of the property for residential use.

7. The Commission finds that the real estate market has been subject to, and continues to suffer from, severe financing, construction, sales and other impediments. This major change in the real estate market has rendered it practically impossible for the Applicant to obtain project financing, despite the Applicant's good faith efforts. Based upon the supporting materials included with the Applicant's extension request, the Applicant has been unable to obtain project financing for the approved PUD project from the numerous lending institutions, investors, and joint venture partners it contacted. In addition, the Commission further finds that the time involved in completing the remediation work on the property and the subsequent issuance of the DDOE Letter constitute an additional, independent basis under § 2408.11(b) of the

Zoning Regulations. Thus, the project cannot move forward at this time, despite the Applicant's diligent, good faith efforts, and the Commission finds that this extension request satisfies the criterion for good cause shown as set forth in § 2408.11 of the Zoning Regulations.

8. The only other party to this application was Advisory Neighborhood Commission ("ANC") 5C. On May 13, 2011, the Applicant served a copy of the request on ANC 5C. By letter dated June 24, 2011, ANC 5C indicated that it did not have sufficient information regarding the extension request, and that the ANC voted 4-3-3 to recommend approval of the extension, but that the Applicant commence construction of the project by December 31, 2012 or no later than June 15, 2013. However, by letter dated July 6, 2011, ANC 5C indicated that following consultation with the Applicant and the receipt of additional information from the Applicant, ANC 5C voted 10-1-1 to amend its prior letter, and to recommend that the Commission grant the full two-year extension requested by the Applicant, such that an application must be filed for a building permit no later than June 15, 2013 and construction must start no later than June 15, 2014.

9. The Office of Planning ("OP") submitted a report dated June 3, 2011 indicating that the Applicant demonstrated evidence of good cause for the extension, and OP therefore recommended that the Commission grant the extension request for a period of two years.

10. Because the Applicant demonstrated good cause with substantial evidence pursuant to § 2408.11(a) and (b) of the Zoning Regulations, the Commission finds that the request for the two-year time extension of the approved PUD should be granted.

CONCLUSIONS OF LAW

1. The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided in § 2408.11. (11 DCMR § 2408.10.) Section 2408.11 provides the following criteria for good cause shown: (a) 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; (b) 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 (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

2. The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving the party in this case with a copy of the request and allowing it 30 days to respond.

3. The Commission concludes there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.

4. 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 affected ANC's recommendations. By letter dated July 6, 2011, ANC 5C indicated that ANC 5C voted 10-1-1 to recommend that the Commission grant the full two-year extension requested by the Applicant, such that an application must be filed for a building permit no later than June 15, 2013 and construction must start no later than June 15, 2014. The Commission has given ANC 5C's recommendation great weight in approving this request.

5. The Commission is required under § 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) to give great weight to OP recommendations. OP submitted a report indicating that the Applicant meets the extension standards of the Zoning Regulations, and therefore recommended that the Commission approve the requested extension. The Commission has given OP's recommendation great weight in approving this application.

6. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11(a). Specifically, the Applicant has been unable to obtain sufficient project financing for the PUD, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control. In addition, the Applicant was unable 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.

7. Section 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11.

8. The Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.

9. The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the request for a two-year time extension of the validity of Z.C. Order No. 06-04, such that an application must be filed for a building permit for the PUD no later than June 15, 2013, and construction must start no later than June 15, 2014.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. 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 identify or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic information, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On July 11, 2011, upon motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Greg M. Selfridge, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on December 2, 2011.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

RICHARD S. NERO, JR.
ACTING DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Z.C. CASE NO.: 06-04B

As Secretary to the Commission, I herby certify that on DEC 6 2011 copies of this Z.C. Order No. 06-04B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*

2. Norman M. Glasgow, Esq.
   Kyrus Freeman
   Holland & Knight, LLP
   2099 Pennsylvania Ave., N.W.
   Washington, D.C. 20006

3. ANC 5C
   P.O. Box 26183
   Washington, DC 20001

4. Commissioner W. Hugh Youngblood
   ANC/SMD 5C03
   70 R Street, N.W.
   Washington, DC 20001

5. Gottlieb Simon

   ANC
   1350 Pennsylvania Avenue, N.W.
   Washington, D.C. 20004

6. Councilmember Harry Thomas, Jr.

7. Melinda Bolling,
   Acting General Counsel
   DCRA
   1100 4th Street, S.W.
   Washington, DC 20024

8. Office of the Attorney General
   (Alan Bergstein)

ATTESTED BY: S. S. Schellin
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning