

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-10I

Z.C. Case No. 06-10I

The Morris and Gwendolyn Cafritz Foundation
(Two-Year Time Extension of 1st-Stage PUD

@ Square 3766, Lots 3, 4, 6, & 800 and Square 3767, Lot 5)

January 30, 2025

Pursuant to notice, at its January 30, 2025 public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of The Morris and Gwendolyn Cafritz Foundation (the “Applicant”) for a two-year time extension of the First-Stage PUD that was initially approved pursuant to Zoning Commission Order No. 06-10 and was extended to December 31, 2024, pursuant to Z.C. Order No. 06-10D. The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning 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

1. In Z.C. Order No. 06-10, effective as of January 15, 2010, the Commission approved the consolidated and first-stage PUD application for Art Place at Fort Totten (“APFT”). The APFT project included development of four blocks, Blocks A-D, with Consolidated PUD approval for Block A, and First-Stage PUD approval for Blocks B, C, and D. The First-Stage Order also granted a PUD-related map amendment for the Property to a combination of the C-2-B and FT/C-2-B zones, which became the MU-5-A zone effective September 2016. The APFT PUD Project was originally envisioned to include approximately 929 residential units, a full-service grocery store, significant community-serving retail and cultural uses, a children’s museum, and other significant amenities and community benefits. (Exhibit [“Ex.”] 2)
2. The construction of the building in Block A, which was subsequently modified in Z.C. Order No. 06-10A (which shifted the grocery store use from Building A to Building B) and Z.C. Order No. 06-10C (which reduced the amount of parking provided in Building A), was completed and The Modern at Art Place has been occupied since 2017. The Modern at Art Place currently includes 520 residential units (141 units are subject to an affordability

covenant) and 92,000 square feet of retail use and commercial use (including tenants such as: One Life Fitness; Ramdass Pharmacy; Shining Star Pediatric Dentistry; Menomale Restaurant; Urban Garden Brewery; and Love and Care Daycare). (Ex. 2)

3. The Block B PUD Project, which received its second-stage PUD approval in Z.C. Order No. 06-10D (effective March 20, 2020), consists of a mixed-use building with two primary components – the Family Entertainment Zone (“FEZ”) and a residential component. The FEZ fronts on South Dakota Avenue and included the following uses: retail space/food hall; theatre/interactive space; gala/events space; Meow Wolf (an innovative arts collective); Explore! Children’s Museum; and an Aldi grocery store. The residential component of the Block B PUD Project, with frontage along the former 4th Street, N.E. (which was closed pursuant to DC Act 23-214), included approximately 271 units (30 reserved as artist affordable units) with ground floor retail spaces and ground floor artist maker spaces. Since the approval of Z.C. Order No. 06-10D, the Commission has approved three modifications of the Block B PUD Project (Z.C. Order Nos. 06-10E, 06-10G, and 06-10H). The Applicant noted that construction activity for the Block B PUD Project began in January of 2022 and to date the Applicant has spent over \$120,000,000 on the development of Block B. An Aldi grocery store opened its doors on December 5, 2024, but the Children’s Museum is not expected to deliver until early 2026. (Ex. 2)
4. The Applicant also noted that on February 15, 2018, the Office of the Zoning Administrator determined that a charter school could operate as a matter-of-right on the portion of the APFT PUD Property that was only subject to First-Stage PUD approval. In that letter, the Zoning Administrator concluded that the property’s inclusion within the First-Stage PUD approved in Z.C. Order No. 06-10 does not bar the owner or tenant of the property from operating a charter school on the property as a matter-of-right. As a result of this approval, the Rocketship Infinity Charter School and the Social Justice School began charter school operations on the property subject to the First-Stage PUD approval in 2021. (Ex. 2, 2E)
5. In Z.C. Order No. 06-10D, Findings of Fact Nos. 35-39 and Condition No. G. 3. addressed the timeline for the filing of the second-stage PUD applications for the development of Blocks C and D. Finding of Fact No. 37 and 38 state:
 - 37. The Applicant will file a second-stage PUD application for either Block C or Block D by December 31, 2024, which is expected to be two years after Block B is open and operating; and
 - 38. The second-stage PUD application for the final development parcel included in the overall PUD will occur by December 31, 2030. (Ex. 2)

Parties and Notice

6. The parties to the Z.C. Case Nos. 06-10 and 06-10D other than the Applicant were Advisory Neighborhood Commissions (“ANC”) 5A and 4B, the “affected” ANCs pursuant to Subtitle Z § 101.8, and the Lamond-Riggs Citizens Association (“LRCA”).

7. On December 20, 2024, the Applicant served the Application on ANCs 5A and 4B and LRCA as well as the Office of Planning (“OP”) and the District Department of Transportation, as attested by the Certificate of Service submitted with the Application. (Ex. 2 at 7)

II. The Application

8. On December 20, 2024, the Applicant timely filed the Application requesting a two-year extension of the First-Stage PUD approval, until December 31, 2026, to file a Second-Stage PUD application for either Block C or D. This extension request will provide the Applicant the opportunity to review, potentially revise, and move forward with Second-Stage PUD applications for the development of Blocks C and D. (Ex. 2) On January 24, 2025, in response to OP’s Report at Exhibit 4, the Applicant submitted a request for a waiver from Subtitle Z § 705.5 to allow a second time extension request for a two-year period. (Ex. 5)
9. The Applicant stated that it met the requirements of Subtitle Z § 705.2 for the requested two-year time extension and the requirements of Subtitle X § 101.9 for a waiver from Subtitle Z § 705.5’s maximum of one year for a second time extension because:
- The time extension request was served on all parties and parties were allowed 30 days to respond;
 - There has been no substantial change in any material facts that would undermine the basis for the Commission’s original approval of the First-Stage PUD. In fact, numerous benefits and amenities of the APFT PUD project have already been provided. The development of Block A has delivered 520 (141 of which are subject to an affordability covenant) of the 920 residential units that were envisioned in the APFT project and Block B will create 270 more residential units. Block A includes a significant amount of retail and service uses (including a fitness club, restaurants, and a day care center) and Block B has delivered the promised full-service grocery store with a children’s museum expected to be delivered in early 2026. In addition, the Applicant has brought two well-established and thriving Charter School uses to the First-Stage PUD property;
 - Good cause justifies the Commission granting the time extension and the waiver because despite the significant investments of time, resources and financial capital that the Applicant has expended, circumstances outside the Applicant’s reasonable control have prevented the Applicant from proceeding with the preparation and filing of Second-Stage PUD applications for Blocks C and D, including a global pandemic, unprecedented increases in construction costs, higher interest rates, and tougher lending conditions. The Applicant noted that the timeline in Z.C. Order No. 06-10D anticipated that Block B would be fully completed by December 2022 and there would be two years of operations of uses by the December 31, 2024, deadline to file second-stage applications for either Block C or D. As noted above, the Aldi grocery store just opened on December 5, 2024, and the other cultural, retail and residential elements of Block B have not been constructed at this time. Therefore, this time

extension request for two more years to file a Second-Stage PUD application for Block C or D is consistent with the amount of time that the Applicant desired to have between the completion and occupancy of uses in Block B and the future development of Blocks C and D; and

- The time extension request does not prejudice the rights of any party and is not otherwise prohibited by law. (Ex. 2, 5)
10. The Application noted that Z.C. Order No. 06-10 approved the construction of an eight-story, 90-foot-tall residential building with 400 residential units on Block C and a seven-story, 90-foot-tall building on Block D that would include rehearsal and support space for Washington-area performing arts institutions and potentially a branch library. During the next two years, the Applicant stated it will further analyze whether these uses are still needed in this community (for instance the Lamond Riggs Library, located across South Dakota Avenue from the Property, recently completed a major renovation and recently reopened) or whether other arts, cultural, or education uses may be more appropriate. (Ex. 2)
11. The Application noted that in response to dialogue with representatives of ANC 5A, LRCA, and members of the surrounding community, the Applicant has agreed to undertake the following actions to enhance the physical appearance of the area around Blocks B, C, and D as follows:
- The Applicant has prepared a full design program for a new fence with signage and art images, as well as banner signs on new light poles throughout the site;
 - The Applicant will install trashcans along South Dakota Avenue in front of Block B; and
 - The Applicant will work with LRCA, ANC 5A, and members of the community to activate the site (in particular the South Dakota Avenue frontage) while the planning for the future development of Blocks C and D progresses. (Ex. 2)

OP Report

12. OP submitted a report dated January 17, 2025 (“OP Report”), stating that it recommended approval of the Applicant’s request for a second extension for a period of two years, and supported a waiver to allow a second extension request for more than one year. OP’s Report noted that there have been changes to the Comprehensive Plan and the Zoning Regulations as well as some new developments in the general area since the original APFT PUD approval in 2010, but none that would negatively affect the material facts upon which the approval was based. (Ex. 4)

Responses from Parties

13. Neither of the affected ANCs, 5A or 4B, submitted responses to the Application.
14. LRCA did not submit a response to the Application.

CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the period of an order approving a PUD upon determining that the time extension request demonstrated satisfaction of the requirements of Subtitle Z § § 705.3, 705.5, and 705.6.
2. The Commission concludes that the Applicant timely filed the Application on December 20, 2024, prior to the December 31, 2024, deadline granted in Z.C. Order No. 06-10D to file a Second-Stage PUD application for either Block C or Block D of the APFT 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 satisfied the requirement of Subtitle Z § 705.2(a) to serve the Application on all parties to the original proceeding, in this case ANCs 5A, 4B and the LRCA and that all parties were given 30 days to respond from the December 20, 2024, date of service.
5. Subtitle Z § 705.5 requires that a second PUD extension request may be approved for no more than one year.
6. Subtitle Z § 101.9 authorizes the Commission to waive any of the provisions of Subtitle Z if, in the judgment of the Commission, the Applicant demonstrates good cause for the waiver and the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.
7. The Commission concludes that the Application demonstrated good cause to waive Subtitle Z § 705.5's requirement that a second time extension request be approved for no more than one year. The Commission determined that, pursuant to Subtitle Z § 101.9, granting a waiver from Subtitle Z § 705.5's requirement will not prejudice the rights of any party nor is it otherwise prohibited by law. The Commission makes this conclusion because the parties to the original order – ANCs 5A and 4B and LRCA were served with the Application and allowed the opportunity to respond. Moreover, the Commission believes that a two-year time extension will give the Applicant adequate time to finalize a new development timeline and mix of uses for the remaining PUD property which better reflects the current and expected economic climate.
8. Subtitle Z § 705.2(b) requires that the Commission find that there is no substantial change in any material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the PUD.
9. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) based on the information provided in the Application materials and the OP Report, which stated that

no substantial change has occurred to any of the material facts upon which the Commission had relied in approving the original Order.

10. 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 governmental 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.*
11. The Commission concludes that the Application met the standard of Subtitle Z § 705.2(c)(1), as the Applicant was unable to move forward with the preparation of second-stage PUD applications for Blocks C or D because of changes in economic and market conditions beyond its reasonable control. The Commission acknowledges the challenges associated with the global COVID pandemic, the unprecedented increases in construction costs, higher interest rates and tougher lending conditions that negatively impacted the Applicant. The Commission agrees that these matters were beyond the Applicant's reasonable control and rendered the Applicant unable to file second-stage PUD applications for Blocks C or D by December 31, 2024. The Commission finds that the two-year time extension request is appropriate.

"Great Weight" to the Recommendations of OP

12. 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 (2001)) and Subtitle Z § 405.9, the Commission must give "great weight" to the recommendations of OP (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)).
13. The Commission finds OP's recommendation to approve the Application persuasive and therefore concurs in that judgment.

"Great Weight" to the Written Report of the ANC

14. 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)) and Subtitle Z § 406.2, the Commission must give "great weight" to the issues and concerns raised in the written report of the affected ANC. To satisfy this great weight requirement, District agencies 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.” (*See Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978)).

15. Neither of the affected ANCs, 5A or 4B, submitted responses to the case record; therefore, the Commission has nothing to which it can give “great weight”.

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. 06-10, as modified by Z.C. Order No. 06-10D, to extend the deadline to December 31, 2026, to file a Second-Stage PUD application for the development of either Block C or D of the APFT PUD.

On January 30, 2025, upon the motion of Anthony J. Hood as seconded by Gwen Wright, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Gwen Wright, Robert E. Miller, Tammy Stidham and Joseph S. Imamura to approve).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 06-10I shall become final and effective upon publication in the *District of Columbia Register*; that is, on May 9, 2025.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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



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.