

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 21-20B

Z.C. Case No. 21-20B

Stuart Investment Company

(Two-Year Time Extension of an Approved Design Review @ Square 662, Lot 16)

April 25, 2024

Pursuant to notice, at its public meeting on April 25, 2024, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of Stuart Investment Company (the “Applicant”) for a two-year time extension of an approved Design Review originally approved in Z.C. Order No. 21-20 (the “Original Order”) and modified in Z.C. Order No. 21-20A (the “Modification Order”) for a mixed-use multifamily residential building with ground-floor retail use (the “Project”) located at Lot 16 in Square 662 (“Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedure, 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

Prior Approvals

1. Pursuant to the Original Order, the Commission granted Design Review approval to construct the Project with approximately 434 residential units and approximately 17,495 square feet of ground floor retail use in the Buzzard Point neighborhood at the corner of S Street, S.W., Half Street, S.W., and the South Capitol Street right-of-way.
2. The Property is located in the CG-4 (Capitol Gateway) zone and abuts South Capitol Street; therefore, pursuant to the Commission’s authority under Subtitle K § 512.1(d), the Project was reviewed and approved in accordance with the CG Zone Design Review criteria of Subtitle K, Chapter 5 and the general Design Review criteria of Subtitle X, Chapter 6.
3. Pursuant to the Modification Order, the Commission approved a Modification of Consequence for changes to the Project’s penthouse, the proposed streetscape along S Street, SW, and the design along the private alley to the north of the building.

Parties and Notice

4. Advisory Neighborhood Commission (“ANC”) 6D, in which the Property is located, is the “affected ANC” and automatically party to the Application. Aside from the affected ANC, there were no other parties to the original proceeding for Z.C. Case No. 21-20.
5. On March 15, 2024, the Applicant served the Application on ANC 6D, as well as the Office of Planning (“OP”) and District Department of Transportation (“DDOT”), as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 3.)

II. The Application

6. On March 15, 2024, the Applicant filed the Application requesting a two-year time extension of the Original Order, prior to the expiration of the validity period on April 8, 2024, to extend the Design Review approval. The Applicant requested that it be allowed until April 8, 2026, to apply for a building permit for the Project. The Application stated that it met the standards for a time extension enumerated in Subtitle Z § 705.2. (Ex. 3.)
7. The Applicant stated there has been no substantial change of material facts since the Commission’s approval in the Original Order, as updated in the Modification Order, and that the Project remains consistent with the design and program approved by the Commission. (Ex. 3.)
8. The Applicant asserted that there is good cause to grant the requested extension in this case because, while the Applicant and development team have continued to move the Project forward, due to unanticipated delays additional time is needed to allow DDOT to complete review of the Applicant’s proposed significant infrastructure improvements to raise the public street network surrounding the Property out of the 500-year floodplain and commencement of such infrastructure work, which the Applicant is implementing in conjunction with the Project’s development. (Ex. 3.)

III. Responses to the Application

9. On April 12, 2024, OP submitted a report stating that OP believed the Application met the standards for the requested two-year extension and recommending approval of the Application. OP agreed with the Application that there has been no substantial change in any of the material facts upon which the Commission based its original approval and that the Applicant had demonstrated good cause for the extension. (Ex. 4.)
10. ANC 6D submitted a written report dated April 16, 2024, stating that at its April 8, 2024 properly noticed public meeting, at which a quorum was present, ANC 6D voted in support of the Application. ANC 6D stated that the unanticipated delays in obtaining the necessary agency approvals for the proposed infrastructure work necessitate approval of the requested extension. (Ex. 5.)

CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the period of an order approving a Design Review upon determining that the time extension request demonstrates 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. The Commission concludes that the Applicant timely filed the Application prior to the expiration of the validity period for the Design Review approval on April 8, 2024, which deadline the Application seeks to extend.
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) by demonstrating that it had served ANC 6D, the only other party to the Original Order, and that ANC 6D was given 30 days to respond from the March 15, 2024, date of service.
5. Subtitle Z § 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 Design Review that would undermine the Commission's justification for approving the Design Review.
6. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) based on the Application and OP Report, which stated that no substantial change has occurred to the material facts upon which the Commission had relied in issuing the Original Order.
7. 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 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.*

8. The Commission concludes that the Application met the standards of Subtitle Z § 705.2(c)(2) due to the unanticipated delays and additional time that is needed for DDOT to complete review and for commencement of construction of the significant infrastructure improvements the Applicant will be implementing in conjunction with the Project in order to raise the public street network surrounding the Property out of the 500-year floodplain. The Commission agrees that these circumstances constitute good cause for the requested two-year extension of the Original Order.

“Great Weight” to the Recommendations of OP

9. The Commission is required to give “great weight” to the recommendations of OP stated in the OP Report 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).)
10. The Commission notes OP’s conclusion that there has been no substantial change to the material facts upon which the Commission’s original approval was based and finds persuasive OP’s recommendation to approve the requested two-year extension.

“Great Weight” to the Written Report of the ANCs

11. 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. (*Spring Valley-Wesley Heights Citizens Ass’n v. District of Columbia Zoning Comm’n*, 856 A.2d 1174, 1180 (D.C. 2004).) 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).)
12. The Commission finds ANC 6D’s recommendation to approve the Application persuasive and concurs in the ANC’s judgment that the unanticipated delays in obtaining the necessary agency approvals for the Applicant’s proposed infrastructure work justify approval of the requested extension.

DECISION

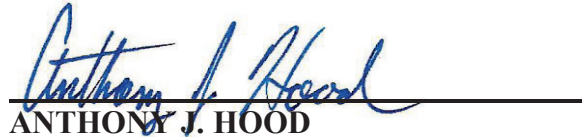
In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Applicant’s request for a two-year time extension of Z.C. Order No. 21-20, as amended in Z.C. Order No. 21-20A, to extend the validity period and deadline to apply for a building permit until April 8, 2026.

Final Action

VOTE (April 25, 2024): 4-0-1

(Tammy Stidham, Joseph S. Imamura, Anthony J. Hood, and Robert E. Miller to approve; 3rd Mayoral Appointee seat vacant.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 21-20B shall become final and effective upon publication in the *District of Columbia Register*; that is, on June 28, 2024.



**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.