

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 15-21A
Z.C. Case No. 15-21A
Kenilworth Revitalization IJV, LLC & DCHA
(Two-Year Time Extension for PUD & Related Map Amendment @
Squares 5113, 5114, and 5116)
January 28, 2019

Pursuant to notice, at a public meeting held on January 28, 2019, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of the District of Columbia Housing Authority (“DCHA”) and Kenilworth Revitalization IJV, LLC (collectively with DCHA, the “Applicant”) for a two-year time extension of the deadlines:

- To file a building permit application to construct the consolidated planned unit development (the “Consolidated PUD”) approved by Z.C. Order No. 15-21 (the “Original Order”), for a portion of Lots 5 through 9 of Square 5113; Lot 10 of Square 5114; and Lots 164, 165, 172-180, and 186 of Square 5116 (collectively, the “Property”);
- To begin construction of the Consolidated PUD; and
- To file a second-stage PUD application for the approved First-Stage PUD (the “First-Stage PUD”), established by the Original Order for a portion of the Property, that would maintain the validity of the First-Stage PUD.

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, Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

1. By the Original Order, effective on January 20, 2017 (the “Effective Date”), the Commission granted the Applicant approval of the Consolidated PUD for Phase 1 of a three-phase development project (the “Project”) on a portion of the Property and of the First-Stage PUD for Phases 2 and 3 of the Project on another portion of the Property, with a related map amendment approval for the Property.
2. The parties to the Original Order were the Applicant and Advisory Neighborhood Commission (“ANC”) 7D. (Original Order, Findings of Fact No. 8.)

3. The Original Order established a two-year period, starting from the Effective Date and ending on January 20, 2019, within which the Applicant had to file an application for a building permit to construct the Consolidated PUD, with construction to start within three years of the Effective Date – by January 20, 2020. (Original Order Conditions A(2)(a) and D(2).)
4. The Original Order also established a two-year period, starting from the Effective Date and ending on January 20, 2019, within which the Applicant had to file an application for a second-stage PUD for the First-Stage PUD, the validity of which expires three years after the Effective Date, by January 20, 2020.¹ (Original Order Condition A(2)(b).)

The Application

5. On November 29, 2018, prior to the January 20, 2019 deadline to file an application for a building permit to construct the Consolidated PUD and to file an application for a second-stage PUD for the First-Stage PUD established by Z.C. Order No. 15-21, the Applicant filed the Application requesting a two-year time extension of these deadlines.
6. The Application included a Certificate of Service attesting to service on all parties to the Original Order, including ANC 7D, on November 29, 2018. (Exhibit [“Ex.”] 1.)
7. The Application asserted that no substantial change had occurred in any of the material facts on which the Commission had relied on in approving the consolidated and first-stage PUD approvals for the Property in the Original Order.
8. The Application justified the requested extension due to the inability to obtain project financing, in particular, the financing subsidies for the Project’s proposed replacement public housing units. The Application stated that the Applicant has submitted Housing Production Trust Fund (“HPTF”) requests to the Department of Housing and Community Development (“DHCD”) in each of the last three funding rounds beginning after the original PUD approval in January 2017. The Applicant was notified by DHCD in both 2017 and 2018 that it would not receive HPTF funding, despite the Applicant’s good faith efforts to revise the financing request to better meet the DHCD scoring framework. The Applicant submitted a third financing request to DHCD in October 2018 and expected a decision in January 2019.

Responses to the Application

Office of Planning (“OP”)

9. OP submitted a report on January 9, 2019, recommending approval of the Application (the “OP Report”). (Ex. 3.) The OP Report concluded that the Applicant satisfied the relevant standards of Subtitle Z § 705.2. The OP Report concluded that there have been no substantial changes to the material facts upon which the Commission had relied in issuing

¹ Pursuant to Title 11 § 2407.10 of the Zoning Regulations of 1958 in effect at the vote of the Commission approving the Consolidated and First-Stage PUDs, the Commission approved a period of longer than one year for the first-stage PUD Approval. (Original Order Condition D(3).)

the Original Order, including no changes to the Comprehensive Plan or the Project plans that would affect the Property. The OP also considered the Applicant's difficulties in obtaining financing through the HPTF Process as sufficient good cause for the requested extension.

10. OP submitted a supplemental report on January 24, 2019 (the "OP Supplemental Report"), which corrected some minor errors in the OP Report. (Ex. 4.) The OP Supplemental Report continued to recommend approval of the Application.

ANC 7D

11. ANC 7D did not submit a written report for this case.

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. The Commission concludes that the Applicant timely filed the Application on November 29, 2018, prior to the January 20, 2019 deadline that the Application sought 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 has satisfied Subtitle Z § 705.2(a) by demonstrating that it had served the only party to the Original Order – ANC 7D – and that the ANC was given 30 days to respond from the November 29, 2018 date of service. The ANC did not file a response to the record.
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 PUD that would undermine the Commission's justification for approving the PUD.
6. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) based on the Application and the OP Report.
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 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.*

8. The Commission concludes that the Application met the standard of Subtitle Z § 705.2(c)(1) because the Applicant has diligently pursued the financing of the development of the Property and has not been able to move forward due to DHCD's HPTF awards process, which is beyond the Applicant's control.

“Great Weight” to the Recommendations of OP

9. The Commission must give “great weight” to the recommendations of OP 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 (2001); *see* Subtitle Z § 405.8.)

10. The Commission found OP’s recommendation that the Commission approve the Application persuasive and concurred in that judgment.

“Great Weight” to the Written Report of the ANC

11. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public 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.); *see* Subtitle Y § 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 Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

12. Since ANC 7D did not submit a written report in this case, there is nothing to which the Commission can give “great weight.”

DECISION

In consideration of the case record and 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 time extensions to extend:

- The deadline to file an application for a building permit to construct the Consolidated PUD established by Z.C. Order No. 15-21 to January 20, 2021, and the deadline to begin construction of the Consolidated PUD to January 20, 2022; and

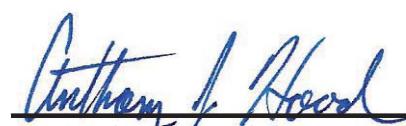
- The deadline to file a second-stage PUD application pursuant to the First-Stage PUD established by Z.C. Order No. 15-21 to January 20, 2021, which timely filing will extend the validity of the First-Stage PUD to January 20, 2022.

VOTE (January 28, 2019): 4-0-1 (Peter A. Shapiro, Peter G. May, Anthony J. Hood, and Michael G. Turnbull to **APPROVE**; Robert E. Miller not present, not voting).

In accordance with the provisions of Subtitle Z § 604.9, this Order 15-21A shall become final and effective upon publication in the *D.C. Register*; that is, on January 24, 2020.

BY 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. BAKDIN
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.