

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-30E
SCD 25 M, LLC

(Two-Year Design Review Time Extension for Property Located @ Square 700)
December 19, 2024

Pursuant to notice, at its public meeting on December 19, 2024, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (“Application”) of SCD 25 M, LLC (the “Applicant”) for a two-year extension of the time period to file a building permit application for the approved Design Review in Square 700, Lot 879¹ (the “Property”) pursuant to Z.C. Order No. 08-30 (the “Order”).

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

FINDINGS OF FACT

I. BACKGROUND

THE PROPERTY

1. The Property is located in the Ballpark neighborhood at the southwest corner of M and Half Streets, S.E., one block north of Nationals Park. The Property constitutes the northern portion of Record Lot 49, which encompasses the entire eastern half of Square 700 occupying the block bounded by M Street, S.E. to the north, Half Street, S.E., to the east, N Street, S.E. to the south, and Van Street, S.E., to the west.

PRIOR APPROVAL

2. Pursuant to the Order, effective April 10, 2009, the Commission approved a Design Review for development of Record Lot 49 as a single building divided into two main phases. The first phase was to consist of a mixed-use development with residential and retail, and the second phase was to consist of a mixed-use development with office and retail uses (the “Project”). The Order provided that the approval would remain valid for a period of five years following issuance of the final Certificate of Occupancy for the first phase of the Project, within which time a building permit application must be filed for the second phase of the Project. A final Certificate of Occupancy was issued for the first phase of the Project

¹ When Z.C. Order No. 08-30 was approved, the Property was designated as Lot 857 in Square 700; the Property is now designated as Lot 879 in Square 700.

on December 3, 2019 (See Exhibit [“Ex.”] 2C). Thus, the Order remains valid until December 3, 2024.

3. In Z.C. Order Nos. 08-30A, 08-30B, 08-30C, and 08-30D, the Commission approved modifications to design elements of the Project (Ex. 2).

PARTIES AND NOTICE

4. The parties to the original application were the Applicant and Advisory Neighborhood Commission (“ANC”) 6D, the ANC in which the Property was located at the time of the original approval. The Property is now located within the boundaries of ANC 8F; therefore, only ANC 8F is an “affected” ANC and an automatic party to this Application (See Subtitle Z §§ 101.8, 403.5(b)).
5. On October 30, 2024, the Applicant served the Application on ANC 8F, the Office of Planning (“OP”), and the District Department of Transportation (“DDOT”), as attested by the Certificate of Service submitted with the Application (Ex. 2 at 7).

II. THE APPLICATION

6. On October 30, 2024, the Applicant timely filed the Application requesting a two-year time extension of the validity of the Order, such that if approved the Applicant would be required to file a building permit application for phase two of the Project no later than December 3, 2026 (Ex. 1-2C).
7. The Application asserted that it met the requirements under Subtitle Z § 705.2, for the proposed two-year time extension because:
 - The Applicant served the extension request on all parties to the application and all parties were allowed 30 days to respond;
 - There was no substantial change in any of the material facts upon which the Commission based its original approval in the Order; and
 - Good cause justified the Commission in granting the time extension because the Applicant has faced the continued challenges predominating the market for new office space and the overall office market, including severe difficulties in securing financing for new office construction, high interest rates, and elevated construction costs. Despite these challenges, the Applicant remains committed to completing the Project, as evidenced by its expenditure of \$1,699,000 in development related costs toward the Project, moving a gas line into the adjacent right of way, establishing an agreement with the Washington Metropolitan Area Transit Authority regarding future development, and advertising and marketing the site to further support development, among other efforts (Ex. 2).

III. RESPONSES TO THE APPLICATION

8. OP submitted a report dated November 27, 2024 (“OP Report”) which recommended approval of the Application (Ex. 5). The OP Report concluded that the requested two-year

extension meets the requirements of Subtitle Z § 705.2; and the Applicant demonstrated with substantial evidence its inability to obtain sufficient financing, following its good faith efforts, because of changes in economic and market conditions beyond its reasonable control, including low office space demand as a lingering effect of Covid-19 and telework. OP further noted that the 2021 changes to the Comprehensive Plan remain supportive of the transit oriented, mixed-use, and walkable development the Project will facilitate.

9. ANC 8F did not submit a response to the case record.

CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the time period of an order 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, 705.4, and 705.6.
2. 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.
3. The Commission concludes that the Applicant satisfied Subtitle Z § 705.2(a) by demonstrating that it served all parties, in this case ANC 8F, on October 30, 2024, and that the ANC was given 30 days to respond from the date of service.
4. Subtitle Z § 705.2(b) requires that the Commission finds that no substantial change has occurred to any of the material facts upon which the Commission based its original approval of the application that would undermine the Commission's justification for approving the original application.
5. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) because there has been no substantial change to the material facts upon which the Commission based its original approval that would undermine the Commission's justification for that approval.
6. 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.*
7. The Commission concludes, based on the Application and the OP Report, that the Application meets the standards of Subtitle Z §§ 705.2(c)(1) because the Project suffered significant challenges due to impacts to the real estate market associated with the aftermath of the Covid-19 pandemic, including high interest rates, elevated construction costs, and low demand for new office space, all of which resulted in the Applicant being unable to secure financing for phase two of the Project. Thus, the Commission concludes that, because of economic and market conditions beyond the Applicant's reasonable control, the Applicant was unable to comply with the time limits of the Order and needs additional time to move forward with phase two of the Project.

“GREAT WEIGHT” TO THE RECOMMENDATION OF OP

8. The Commission is required to give “great weight” to the recommendations of OP 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 § 405.9 (*Metropole Condo. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)).
9. The Commission finds OP’s recommendation to approve the Application persuasive and concurs in that judgment.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

10. 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 (*Metropole*, 141 A.3d 1087). 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)).
11. As previously noted, ANC 8F did not submit a response to the case record.

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 extension of the deadline to file a building permit application for phase two of the Project, with the requirement that the Applicant:

- File a building permit application no later than **December 3, 2026**.

VOTE (December 19, 2024): 4-0-1

(Anthony J. Hood, Robert E. Miller, Tammy Stidham, and Gwen Marcus Wright to approve; Joseph Imamura, not present, not voting.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 08-30E shall become final and effective upon publication in the District of Columbia Register; that is, on March 7, 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.