

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-21E
Z.C. CASE NO. 15-21E**

**District of Columbia Housing Authority (“DCHA”)
(Two-Year PUD Time Extension @ Square 5113, Lots 5-9; Square 5114, Lot 10;
and Square 5116, Lots 164, 165, 172-180 & 186)
February 29, 2024**

Pursuant to notice, at its public meeting on February 29, 2024 the Zoning Commission for the District of Columbia (the “Commission”) considered the application of the District of Columbia Housing Authority (“DCHA” or “Applicant”) for a two-year time extension of Z.C. Order 15-21 (the “Original Order”), as modified by Z.C. Order No.15-21B, and previously extended by Z.C. Order Nos. 15-21A, 15-21C, and 15-21D for Lots 5-9 in Square 5113, Lot 10 in Square 5114, and Lots 164, 165, 172-180, and 186 in Square 5116 (collectively, the “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, Z.C. Order No. 15-21, effective January 20, 2017, the Commission approved construction of a mixed-use development on the Property (previously improved with a DHCD public housing development, Kenilworth Courts) to consist of approximately 530 residential units, with public housing replacement units, tax credit rental units, market rate units for rent and sale, and non-residential uses to include a grocer/fresh food use, more specifically:
 - A consolidated PUD (“Consolidated PUD”) for Phase 1 of the proposed development to construct 166 new residential units and 2,890 square feet of non-residential uses;
 - A First-Stage PUD (“First-Stage PUD”) for Phases 2 and 3 of the proposed development including the development of three multi-family buildings, townhouses, and stacked flats, ranging from one to five-bedroom units. Both phases are comprised entirely of income restricted units with approximately 321 new units in Phase 2 and approximately 42 units in Phase 3; and

- A related Map Amendment from the R-1-B and R-5-A zone districts to the R-5-B and C-2-A zone districts, respectively. (the “Project.”)
2. Pursuant to Z.C. Order No. 15-21A, effective January 24, 2020, the Commission approved a two-year time extension of the deadlines of the Original Order, as follows:
 - For the Consolidated PUD, the deadline to file a building permit for construction was extended to January 20, 2021, and the deadline to start construction was extended to January 20, 2022¹; and
 - For the First-Stage PUD, the deadline to file a Second-Stage PUD application for Phase 2 was extended to January 20, 2021, which timely filing would extend the validity of the First-Stage PUD to January 20, 2022.
 3. Pursuant to Z.C. Order No. 15-21B, effective April 16, 2021, the Commission approved a Modification of Consequence to the plans and conditions for the First-Stage PUD approved in the Original Order.
 4. Pursuant to Z.C. Order No. 15-21C, effective April 16, 2021, the Commission approved a second two-year time extension to the deadlines of the Original Order for the First-Stage PUD, the deadline to file a Second-Stage PUD application for Phase 2 was extended to January 20, 2023, which timely filing would extend the validity of the First-Stage PUD to January 20, 2024.
 5. Pursuant to Z.C. Order No. 15-21D, effective April 7, 2023, the Commission approved a third extension for a one-year time extension to the deadlines of the Original Order for the First-Stage PUD, the deadline to file a Second-Stage PUD application for Phase 2 was extended to January 20, 2024, which timely filing would extend the validity of the First-Stage PUD to January 20, 2025.

PARTIES

6. The parties to the Original Order were the Applicant and Advisory Neighborhood Commission (“ANC”) 7D.

II. THE APPLICATION

7. On January 23, 2024², the Applicant filed the Application requesting a two-year extension of the January 20, 2024, deadline to file a Second-Stage PUD application for Phase 2, and a waiver from Subtitle Z § 705.5’s requirements, which allow no more than two-time extension requests for an approved PUD and limit the second time extension approval to no more than one year. The Application would allow a fourth time extension and a third time extension approval for more than one year. The Application asserted that it satisfied

¹ The Consolidated PUD (Phase 1) is currently under construction and delivery is anticipated in Spring 2024.

² The Commission notes that the Application was not filed prior to the January 20, 2024 expiration deadline, as required under Subtitle Z § 705.2; the Commission waives this requirement, pursuant to Subtitle Z § 101.9, because the Commission finds good cause to allow this Project to continue for the reasons stated in this Order and the waiver will not prejudice the rights of any party nor is it otherwise prohibited by law. (See Conclusions of Law Nos. 2, 8, and 10.)

the requirements of Subtitle Z § 705.2 and Subtitle Z § 101.9 to justify both the time extension and the waiver. (Ex. 3.)

8. The Application asserted it satisfied the requirement of Subtitle Z § 705.2(a) to serve all parties and attested by Certificate of Service, included with the Application, that the Applicant served the Application on the ANC 7D, ANC Single Member Commissioner 7D03 and 7D01, and the Office of Planning on January 19, 2024. (Ex. 3, 8.)
9. The Application asserted that it satisfied the requirements of Subtitle Z § 705.2(b) because no substantial change has occurred in any of the material facts on which the Commission relied upon in approving the Original Order. The Application stated that the requested extension does not involve a change in use, Project affordability requirements, approved PUD benefits and amenities, required covenants, or request of additional zoning relief. Therefore, the Applicant remains committed to delivering all phases of the PUD; the extension will allow additional time to complete construction of Phase 1 and to prepare and file the Second-Stage PUD application for Phases 2. (Ex. 3.)
10. The Application asserted that it satisfied the substantial evidence requirements of Subtitle Z § 705.2(c) to justify the time extension for the following reasons:
 - DCHA and its developer partners have experienced difficulties obtaining financing as substantial subsidies are needed to fund the Project. Both District and federal subsidies are in high demand and have not been adequate to meet the overall need for the Project;
 - High inflation and higher interest rates have led to increased construction costs; and
 - DCHA is required to provide relocation assistance to the families on the PUD site and to facilitate a one-move strategy for Phase 2 (families will move directly from Phase 2 into the newly built Phase 1 units); once relocation is completed, DCHA can prepare and submit a Second-Stage PUD application by January 2026. (Ex. 3.)
11. The Application asserted that the same good cause—the difficulties in obtaining financing for the overall PUD because of high demand for both District and federal subsidies, inflation, high interest rates and increased construction costs, and coordinating a multi-phased Project involving a one-move strategy for relocating families—supported its requested waiver from Subtitle Z § 705.5’s requirements to allow a fourth time extension and a third time extension for more than one year. (Ex. 3.)

III. RESPONSES TO THE APPLICATION

OP REPORT

12. OP submitted a report on February 17, 2024 (the “OP Report”), that recommend approval of the Application based on OP’s conclusion that:
 - No substantial change has occurred to the material facts upon which the Commission relied in approving the Original Order;
 - The Applicant has shown good cause for granting an extension because of an inability to obtain financing due to competitiveness for District subsidy resources, and high interest rates and increased construction costs; and

- The Applicant satisfied the requirements of Subtitle Z § 705.2 and Subtitle Z § 101.9 for a waiver from Subtitle Z § 705.5 requirements, to allow a fourth extension and third extension for more than one year. (Ex. 6.)

ANC REPORT

13. ANC 7D did not submit a report in response to the Application.

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 upon a determination that the limitations of Subtitle Z §§ 705.3, 705.5, and 705.6 have been adhered to.
2. The Commission concludes that the Applicant did not timely file the Application prior to the January 20, 2024, deadline to file a Second-Stage PUD application for Phase 2; however, the Commission waives this requirement, pursuant to Subtitle Z § 101.9, for the reasons stated below in Conclusions of Law Nos. 8 and 10. (See FF No. 7 above.)
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)'s requirement to serve all parties by demonstration that the Applicant served the only other party to the Original Order—ANC 7D—and that the ANC was given 30 days to respond from the January 19, 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 PUD that would undermine the Commission's justification for approving the PUD.
6. The Commission concludes, based on the Application and the OP Report, that the Application satisfied Subtitle Z § 705.2(b)'s requirement that no substantial change in any of the material facts upon which the Commission based its approval of the Original Order has occurred that would undermine the Commission's justification for that approval.
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 review of Subtitle Z § 705.2(c)(1) because of difficulties in obtaining financing for Phases 2 and 3 due to high demand for both District and federal subsidies, and inflation and high interest rates leading to increased construction costs. Thus, financing challenges and circumstantial factors have delayed the completion of Phase 1, the ability to relocate residents from the Phase 2 site directly to completed Phase 1, and the ability to devote resources to file a Second-Stage PUD application for advancing Phases 2 and 3. These delays were beyond the Applicant's reasonable control and prevented the Applicant from complying with the deadline to file a Second-Stage PUD application for Phase 2.
9. Subtitle Z § 101.9 authorizes the Commission to waive any provision, for good cause shown if, in the judgment of the Commission the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.
10. The Commission concludes that the same good cause for the time extension— the difficulties in obtaining financing for the overall PUD because of demand for both District and federal subsidies, inflation, and high interest rates and increased construction costs, and coordinating a multi-phased Project with a one-move strategy for relocating families —support the Applicant's requested waiver from Subtitle Z § 705.5's requirements of no more than two time extension requests for an approved PUD and limit of the second time extension approval to no more than one year. And the waiver will not prejudice the rights of the only other party, ANC 7D, as the ANC was allowed to respond to the Application, nor is the waiver otherwise prohibited by law.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

11. The Commission must 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 § 405.8. (*See Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
12. The Commission found OP's recommendation that the Commission approve the Application persuasive and concurs in that judgment.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF ANC

13. 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.)), 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. (See *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. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978.) (citation omitted).)

14. The affected ANC, ANC 7D, did not submit a report in response to the Application; therefore, the Commission has nothing to which it can give “great weight.”

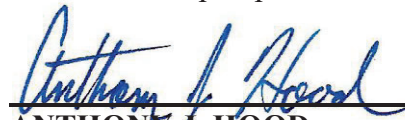
DECISION

In consideration of the case record, the Findings of Fact, and the 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 the deadline to file a Second-Stage Application for Phase 2 to January 20, 2026, and extension of the validity of the First-Stage PUD to January 20, 2027, with a waiver from Subtitle Z § 705.5’s requirements to allow a fourth time extension and a third time extension for more than one year.

VOTE (February 29, 2024): 4-0-1

(Robert E. Miller , Joseph S. Imamura, Anthony J. Hood, and Tammy Stidham to approve; 3rd Mayoral Appointee seat vacant, not voting.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 15-21E shall become final and effective upon publication in the *District of Columbia Register*; on June 21, 2024.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS THE D.C. HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (THE “ACT”). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE 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. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.