

# **EXHIBIT F**

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 15-21D  
Z.C. CASE NO. 15-21D  
Kenilworth Revitalization I JV, LLC &  
the District of Columbia Housing Authority (“DCHA”)  
(One-Year PUD Time Extension @ Square 5113, Lots 5-9; Square 5114, Lot 10;  
& Square 5116, Lots 164, 165, 172-180 & 186)  
January 12, 2023**

Pursuant to notice, at its public meeting on January 12, 2023, the Zoning Commission for the District of Columbia (the “Commission”) considered the application of Kenilworth Revitalization I JV, LLC and DCHA (the “Applicant”) for a one-year time extension of Z.C. Order 15-21 (the “Original Order”), as modified by Z.C. Order Nos. 15-21A, 15-21B, and 15-21C, 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 Application requests one-year extensions on the deadlines established in Z.C. Order No. 15-21C to:

- Extend the deadline for filing the Second-Stage PUD application for Phase 2 to January 20, 2024; and
- Extend the validity of the First-Stage PUD to January 20, 2025, with
- A waiver from Subtitle Z § 705.5<sup>1</sup> to allow a third time extension (the “Application”).

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**

**PRIOR APPROVALS**

1. Pursuant to the Original Order, Z.C. Order No. 15-21, effective January 20, 2017, the Commission approved:

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<sup>1</sup> Subtitle Z § 705.5 limits applicants with an approved PUD to no more than two requests for a time extension and limits a second time extension approval to only one year.

- 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; 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.
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, 2022; 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, as follows:
    - 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.

## **PARTIES**

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

## **II. THE APPLICATION**

6. On December 7, 2022, prior to the January 20, 2023 deadline to file a Second-Stage PUD application for Phase 2, the Applicant filed the Application requesting a one-year extension of the aforementioned deadline and a waiver from Subtitle Z § 705.5’s maximum two-time extensions for an approved PUD to allow a third time extension. The Application asserted that it satisfied the good cause requirements of Subtitle Z § 705.2 and Subtitle Z § 101.9 to justify both the time extension and the waiver. (Ex. 2.)
7. 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 December 7, 2022. (Ex. 2, p. 8.)

8. 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 Applicant remains committed to delivering all phases of the PUD; that construction of Phase 1 is well underway; and the additional time requested will allow for preparation and allocation of sufficient resources to file the Phase 2 and 3 Second-Stage applications, which will produce approximately 363 new units collectively. (Ex. 2.)
9. 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:
  - Recurring challenges with obtaining financing subsidies for the PUD's replacement public housing units;
  - Challenges and complications with securing financing for Phase 1, which did not occur until December 2021, largely as a result of the COVID-19 pandemic;
  - Ongoing challenges with securing financing for Phases 2 and 3 because of inflation, increased costs of construction financing, and interest hikes; however, the Applicant believes that inflation will settle in the coming months; and
  - Executing the DCHA requirement to relocate families from the Phase 2 site (with a one-move relocation strategy from the Phase 2 site directly to completed Phase 1) prior to devoting resources to prepare and file a Second-Stage application for Phase 2. (Ex. 2.)
10. The Application also included an affidavit signed by the Applicant's representative, attesting to the reasons stated as justification for the time extension. (Ex. 2F.)
11. The Application asserted that the same good cause—the delays in obtaining financing for the overall PUD because of COVID-19 and unfavorable market conditions and coordinating a multi-phased project with DCHA involving relocating families—supported its requested waiver from Subtitle Z § 705.5 to allow a third time extension. (Ex. 2.)

### **III. RESPONSES TO THE APPLICATION**

#### **OP REPORT**

12. OP submitted a report on January 6, 2023 (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 a third extension because of an inability to obtain financing, which has delayed meeting the requirement to relocate residents from the Phase 2 site directly to completed Phase 1, and delayed preparation of plans to file a Second-Stage application for Phase 2; and

- The Applicant satisfied the requirements of Subtitle Z § 705.2 and the requirements of Subtitle Z § 101.9 for a waiver from Subtitle Z § 705.5. (Ex. 6).

#### **ANC REPORT**

13. ANC 7D did not submit a report in response to the Application.
14. Dorothy Douglas, the Single Member Commissioner representative for 7D03, filed a letter dated December 13, 2022, stating no objection to the requested time-extension (Ex. 5.)

#### **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 timely filed the Application on December 7, 2022, prior to the January 20, 2023, deadline to file a Second-Stage PUD application for Phase 2.
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 December 7, 2022 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 the COVID-19 pandemic complicated and delayed obtaining financing for Phase 1, and unfavorable market conditions have delayed obtaining financing for Phases 2 and 3 thereby preventing construction from commencing as initially planned. Thus, financing challenges have delayed the ability to relocate residents from the Phase 2 site directly to completed Phase 1, and the ability to devote appropriate resources to file a Second-Stage PUD application for Phase 2. 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 delays in obtaining financing for the overall PUD and coordinating a multi-phased project with DCHA involving relocating families —support the Applicant's requested waiver from Subtitle Z § 705.5's maximum two-time extensions for an approved PUD. And that 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**

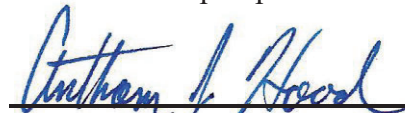
In consideration of the case record, the Findings of Fact, and the Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for:


- A one-year time extension of the deadline to file a Second-Stage Application for Phase 2 from January 20, 2023, to January 20, 2024; and
- A one-year time extension of the validity of the First-Stage PUD from January 20, 2024, to January 20, 2025, with:
- A waiver from Subtitle Z § 705.5 to allow a third time extension.

**VOTE (January 12, 2023): 4-0-1**

(Peter G. May, Joseph S. Imamura, Anthony J. Hood, Robert E. Miller to **APPROVE**; 3<sup>rd</sup> Mayoral Appointee seat vacant, not voting)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 15-21D shall become final and effective upon publication in the *D.C. Register*; on April 7, 2023.

  
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.