

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 17-21C**

Z.C. Case No. 17-21C

As You Like It LLC

**(One-Year Time Extension for Approved PUD @ Square 498, Lot 52 [501 I Street, S.W.]
January 30, 2025**

Pursuant to notice, at its January 30, 2025 public meeting, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of As You Like It LLC (“Applicant”) for a one-year time extension of the approved consolidated planned unit development (“PUD”) and Zoning Map amendment approved in Z.C. Order No. 17-21, as modified by Z.C. Order No. 17-21A and as extended by Z.C. Order No. 17-21B. The property (Lot 52 in Square 498) that is the subject of the application has a street address of 501 I Street, S.W. (“Property”). 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

PRIOR APPROVALS

1. Pursuant to Z.C. Order No. 17-21 (“Order”), as amended by Z.C. Order No. 17-21A, the Commission approved a consolidated PUD and related map amendment for the Property, which authorized construction of a mixed-use building including office, rehearsal, education, and costume-shop space for the Shakespeare Theatre Company (“STC”); approximately 70 for-sale residential units; and approximately 40 on-site and 15 off-site parking spaces (collectively, “Project”).
2. Condition E.2 of the Order required the Applicant to file for a building permit by November 29, 2021.
3. Pursuant to Subtitle Z § 705.9, the Commission approved a one-year administrative time extension to file the building permit by November 29, 2022 in Z.C. Order No. 17-21(1).
4. Pursuant to Z.C. Order No. 17-21B, the Commission approved a two-year time extension to file the building permit by November 29, 2024.

PARTIES AND NOTICE

4. The only party to the Order was Advisory Neighborhood Commission (“ANC”) 6D, which is the “affected” ANC.¹
5. On November 25, 2024, the Applicant served the Application on ANC 6D, as well as the Office of Planning (“OP”) and the District Department of Transportation, as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2.)

THE APPLICATION

6. On November 25, 2024, the Applicant timely filed the Application requesting a one-year time extension of the Order, to extend the PUD and Zoning Map amendment approval. The Applicant requested that it be allowed until November 29, 2025 to file a building permit application for the Project.
7. The Application asserted that it met the requirements for a time extension enumerated in Subtitle Z § 705.2 because:
 - There has been no substantial change in any material facts upon which the Commission based its approval of the Order; and
 - The PUD has been unable to obtain project financing for the following reasons:
 - The continued after-effects of the pandemic on performing arts organizations such as STC, which have severely disrupted the programming and financing assumptions behind STC’s participation in the Project;
 - The impact of the elevated interest rate environment, which has raised the effective cost for potential purchasers of the Project’s for-sale multifamily component;
 - The existing state of the market including inflation, interest rates, and elevated construction costs; and
 - The accompanying challenges all of the above events imposed on securing sufficient capital to finance the Project.
 - Other conditions beyond the Applicant’s reasonable control render the Applicant unable to comply with the time limits of the Order as extended; specifically, a pending sale of the Property for by-right development and the need to extend the validity of the PUD during the contract diligence period, not only to maintain the Applicant’s significant investment in the PUD approval but also to maintain the protections for the neighbors that were memorialized in the PUD.

(Ex. 2.)

¹ United Neighbors of Southwest submitted a request for party status in opposition, which was later withdrawn. Martin Welles submitted a request for party status in opposition, which the Commission denied.

RESPONSES TO THE APPLICATION

8. On December 23, 2024, OP submitted a report, recommending approval of the Application and concluding there were no substantial changes to the material facts upon which the Commission had based its approval of the Order. (Ex. 5.)
9. On December 13, 2024 and pursuant to a vote taken at a regularly-scheduled and duly-noticed public meeting, ANC 6D submitted a resolution in support of the Application. (Ex. 4.)

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 prior to its expiration.
3. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that 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 served ANC 6D, the only party to the Order, on November 25, 2024 and that ANC 6D was given 30 days to respond from November 25, 2024.
5. Subtitle Z § 705.2(b) requires that the Commission find that no substantial change has occurred to 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 upon the Application and the OP Report, which each stated no substantial changes had occurred to the material facts upon which the Commission based its prior approval that would undermine the Commission's justification for approving the Project.
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 standards of Subtitle Z §§ 705.2(c)(1) and 705.2(c)(3) due to adverse conditions affecting not only the financing market for commercial real estate development but also the financing of the performing arts and for-sale multifamily components of the Project, all of which were beyond the Applicant's reasonable control. The need to maintain the requirements and conditions of the PUD during the pending contract period also represents a condition beyond the Applicant's reasonable control. For these reasons, the Commission agrees that these conditions constitute good cause for the requested one-year extension of the PUD.

"GREAT WEIGHT" TO THE RECOMMENDATIONS OF OP

9. 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).
10. 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(S)

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 that judgment.

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 Application's request for a two-year time extension of Z.C. Order No. 17-21, with the requirement that the Applicant:

- File a building permit application to construct the PUD approved by Z.C. Order No. 17-21, as modified by Z.C. Order No. 17-21A, by November 29, 2025; and
- Begin construction of the PUD approved by Z.C. Order No. 17-21, as modified by Z.C. Order No. 17-21A, by November 29, 2026.

VOTE (January 30, 2025): 5-0-0 (Anthony J. Hood, Robert E. Miller, Gwen Wright, Tammy Stidham, and Joseph S. Imamura to approve)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 17-21C shall become final and effective upon publication in the *DC Register*; that is, on _____, 2025.

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.