

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 20-12A**

Z.C. Case No. 20-12A

**Westminster Presbyterian Church and Westminster Community Partners, LLC
(Two-Year PUD Time Extension for
Property Located @Square 499, Lot 52
(400 I Street, S.W.))
July 11, 2024**

Pursuant to notice, at its public meeting on July 11, 2024, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of Westminster Presbyterian Church and Westminster Community Partners, LLC (together, “Applicant”) for a two-year extension of the time period to file a building permit application for the approved mixed-use development project (“Project”) to be located at 400 I Street, S.W. (Square 499, Lot 52) (the “Property”). The Project was approved as part of a consolidated Planned Unit Development (“PUD”) and Zoning Map amendment pursuant to Z.C. Order No. 20-12 (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. PRIOR APPROVAL AND EXISTING PUD DEADLINES

1. Pursuant to the Order, effective June 10, 2022, the Commission approved a consolidated PUD with a related Zoning Map amendment from the R-3 zone to the MU-2 zone. The Order approved development of a building with new facilities for the Westminster Presbyterian Church (the “Church”) and approximately 222 new residential units, consisting of two separate towers as follows:
 - a. The “West Tower” includes approximately 99 residential units. If the West Tower is developed with rental units, then it is required to dedicate 8% of the residential gross floor area (“GFA”) as affordable housing for households earning up to 60% of the median family income (“MFI”). If the West Tower is developed with for-sale units, then it is not required to provide any affordable housing; and

- b. The “East Tower” including approximately 123 residential units entirely devoted to senior affordable housing reserved for households earning up to 60% of the MFI for the first 40 years of the Project. After the first 40 years, and if the West Tower is devoted to rental units, then the East Tower is required to dedicate eight percent of the residential GFA as affordable housing for households earning up to 60% of the MFI. After the first 40 years, and if the West Tower is devoted to for-sale units, then the East Tower is required to dedicate 15% of the residential GFA as affordable housing for households earning up to 60% of the MFI (the “Project”).
2. The Project also includes new facilities for the Church, which would be located on the ground floor of the East Tower, and would include a large assembly/congregation space, kitchen and dining areas, conference rooms, offices, and a community gallery and art space. The Order requires that if all three components of the Project cannot be constructed concurrently, that the East Tower, which includes the senior affordable housing and the new Church facilities, must be completed first. (*See* Order, Decision No. A.4)
3. Pursuant to Decision No. D(2) of the Order, the approval is valid for a period of two years from the effective date of the Order, within which time an application must be filed for a building permit, with construction required to commence within three years of the effective date of the Order. Accordingly, the Applicant is required to file a building permit application for the Project no later than June 10, 2024, and must commence construction of the Project no later than June 10, 2025.

PARTIES AND NOTICE

4. The parties to the Order were the Applicant and Advisory Neighborhood Commission (“ANC”) 6D.
5. On May 29, 2024, the Applicant served the Application on ANC 6D, as well on the Office of Planning (“OP”), as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2 at 7)

II. THE APPLICATION

6. On May 29, 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 the Project no later than June 10, 2026, and start construction of the Project no later than June 10, 2027. (Ex. 2)
7. The Application asserted that it met the requirements under Subtitle Z § 705.2 for the proposed two-year time extension because:
 - a. There has been no substantial change in any of the material facts upon which the Commission based its approval in the Order; and
 - b. Good cause justifies the Commission’s granting the time extension because the Applicant has been unable to obtain sufficient project financing following its diligent

good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the Applicant's reasonable control, including:

- Continued impacts of the Covid-19 pandemic that have created an inhospitable market for multi-family residential development;
- Significant increases in construction costs, insufficient labor, and supply chain issues;
- Nationwide inflation, interest rate hikes, heightened borrowing costs, tightened credit, and general uncertainty in the future of the market; and
- A weak lending market due to the above-cited conditions. (Ex. 2.)

8. The Application stated that despite the weak lending market, the Applicant continued to try to obtain financing for the affordable housing component of the Project, since the Order requires that the affordable housing be built first or concurrently with the market rate housing, including taking the following steps:
 - Preparing and submitting an application for funding from the Department of Housing and Community Development ("DHCD"). However, the Project was not selected for DHCD funding; and
 - Preparing and submitting an application for funding from the Amazon Housing Equity Fund, which is intended to preserve and create affordable housing for moderate and low-income families. However, the Project was not selected for Amazon funding. (Ex. 2, 2D)
9. The Application further stated that since approval of the PUD, the Church continued to maintain the Property and existing building in good working condition, and continued to host weekly worship services, jazz and blues nights, and religious programming for children, among other activities and community services. (Ex. 2, 2D)
10. The Application included an affidavit of Buwa Binitie, the Manager of Westminster Community Partners, LLC, attesting to the challenges that justify the time extension. (Ex. 2D.)

III. RESPONSES TO THE APPLICATION

11. OP submitted a report dated June 28, 2024 ("OP Report"), recommending approval of the Application and concluding that (i) the Application was served on all parties, which were given more than 30 days to respond; (ii) there have been no substantial changes in any material facts upon which the Commission based its original approval that would undermine its justification; and (iii) the Applicant demonstrated with substantial evidence its inability to obtain sufficient project financing following its diligent good faith efforts because of changes in economic and market conditions beyond the Applicant's reasonable control. (Ex. 5.)
12. ANC 6D submitted a report dated June 11, 2024, stating that at its regularly scheduled and properly noticed public meeting on June 10, 2024, with a quorum of Commissioners present, ANC 6D voted 8-0-0 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 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. 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.
3. The Commission concludes that the Applicant satisfied Subtitle Z § 705.2(a) by demonstrating that it served all parties on May 29, 2024, in this case ANC 6D, and that the ANC was given 30 days to respond from May 29, 2024.
4. Subtitle § 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 that would undermine the Commission's justification for approval.
5. The Commission concludes, based on the Application and the OP Report, 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 of the Order 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 government 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.*
7. The Commission concludes that the Application meets the standards of Subtitle Z § 705.2(c)(1) because the Project has been unable to obtain sufficient project financing, despite the Applicant's good faith efforts, due to changes in economic and market conditions beyond the Applicant's reasonable control. Continued impacts of the Covid-19 pandemic resulted in a severely disrupted market for multi-family residential development. Nationwide inflation, increased interest rates, heightened borrowing costs, tightened credit, and general uncertainty in the future of the market made it nearly impossible to obtain financing for the Project. At the same time, increases in construction costs, insufficient

labor, and supply chain issues made it extremely difficult to establish reasonable project budgets or timelines. The combination of these various factors resulted in the Applicant being unable to move forward with development of the Project within the Order's time limits, despite its good faith efforts to do so.

“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. *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 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 Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978))
11. ANC 6D submitted a written report in support of the Applicant’s request for a two-year extension. The Commission finds the ANC’s recommendation in support 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 Applicant’s request for a two-year extension of the time period to file a building permit application for the building to be located at 400 I Street, S.W. (Square 499, Lot 52), with the requirement that the Applicant:

- File a building permit application to construct the Project no later than June 10, 2026; and
- Start construction of the Project no later than June 10, 2027.

VOTE (July 11, 2024): 4-0-1


(Anthony J. Hood, Tammy Stidham, Robert

E. Miller, and Joseph S. Imamura to approve;
3rd Mayoral Appointee seat vacant.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 20-12A shall become final and effective upon publication in the *District of Columbia Register*; that is, on January 31, 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.