

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 20-27A

Z.C. Case No. 20-27A

High Street District Development, Inc.
(Two-Year Time Extension of an Approved Consolidated
PUD and Zoning Map Amendment @ Square 445, Lot 222)
September 26, 2024

Pursuant to notice, at its public meeting on September 26, 2024, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of High Street District Development, Inc. (the “Applicant”) for a two-year time extension of the approved consolidated Planned Unit Development (“PUD”) and Zoning Map amendment approved in Z.C. Order No. 20-27 (the “Order”) for the development a mixed-use building with approximately 223 residential units and approximately 7,400 square feet of ground-floor retail space (the “Project”) located at Lot 222 in Square 445 (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

Prior Approvals

1. The Order, effective December 17, 2021, granted a consolidated PUD and related Zoning Map amendment from the MU-4 zone to the MU-6 zone to allow the development of a mixed-use building with approximately 223 residential units and approximately 7,400 square feet of ground-floor retail space along 7th and P Streets, N.W. The Order required a building permit application for the Project to be filed by December 17, 2023, and construction to commence by December 17, 2024.

Parties and Notice

2. Advisory Neighborhood Commission (“ANC”) 2G, in which the Property is located, is the “affected ANC” and automatically party to the Application.¹ Aside from the affected ANC, there were no other parties to the original proceeding for Z.C. Case No. 20-27.

¹ When the original application was approved, the Property was located within ANC 6E. The Property is now located within ANC 2G.

3. On July 16, 2024, the Applicant served the Application on ANC 2G, as well as the Office of Planning (“OP”) and District Department of Transportation (“DDOT”), as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2)

The Application

4. On July 16, 2024, prior to the December 17, 2024, expiration of validity, the Applicant filed the Application requesting a two-year time extension of the period to commence construction and validity of the Order to December 17, 2026. The Application stated that it met the standards for a time extension enumerated in Subtitle Z § 705.2. (Ex. 2)
5. The Applicant stated there has been no substantial change of material facts since the Commission’s approval in the Order and that the Project remains consistent with the design and program approved by the Commission. (Ex. 2)
6. The Applicant asserted that there is good cause to grant the requested extension in this case. Specifically, while the Applicant has made progress towards construction, including preparing permit plans and filing a building permit application within the time deadline of the Order, the Applicant continues to face the ongoing adverse market conditions affecting the commercial real estate sector, including elevated construction costs and the significant shift in the interest rate environment in the financing market. (Ex. 2)

Responses to the Application

7. On September 11, 2024, OP submitted a report stating that the Application met the standards for the requested two-year extension and recommending approval of the Application. OP agreed with the Application that there has been no substantial change in any of the material facts upon which the Commission based its original approval and that the Applicant had demonstrated good cause for the extension. (Ex. 4)
8. ANC 2G did not submit a written report commenting on the Application.

CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the time periods of an order upon determining that the time extension request demonstrates 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 the expiration of the validity period for the Order on December 17, 2024, which deadline the Application seeks to extend.
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 satisfied the requirement of Subtitle Z § 705.2(a) by demonstrating that it had served ANC 2G, the only other party to the

Application, and that the ANC was given 30 days to respond from the July 16, 2024, date of service. As noted above, ANC 2G did not file a written response to the Application.

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 Order that would undermine the Commission's justification for approving the original application.
6. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) based on the Application and OP Report, which stated that no substantial change has occurred to the material facts upon which the Commission had relied in issuing the Order.
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 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) due to the significant adverse conditions beyond the Applicant's reasonable control affecting the financing market for commercial real estate development. The Commission agrees that these matters resulted in the Applicant's inability to commence construction by the time deadline of the Order and constitute good cause for the requested two-year extension of the Order.

"Great Weight" to the Recommendations of OP

9. The Commission is required to give "great weight" to the recommendations of OP stated in the OP Report 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. (*Metropole Condo. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
10. The Commission notes OP's conclusion that there has been no substantial change to the material facts upon which the Commission's original approval was based and finds persuasive OP's recommendation to approve the requested two-year extension.

“Great Weight” to the Written Report of the ANCs

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. ANC 2G did not submit a written report to which the Commission can give great weight.

DECISION

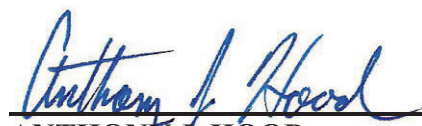
In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for a Two-Year Time Extension of Z.C. Order No. 20-27, to extend the validity period and deadline to commence construction until December 17, 2026.

Final Action

VOTE (September 26, 2024): 4-0-1

(Tammy Stidham, Joseph S. Imamura, Anthony J. Hood, and Robert E. Miller to approve; 3rd Mayoral Appointee seat vacant.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 20-27A shall become final and effective upon publication in the *District of Columbia Register*; that is, on April 4, 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.