

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA ZONING
COMMISSION ORDER NO. 22-08A

Z.C. Case No. 22-08A

NRP Properties, LLC

(Two-Year Design Review Time Extension @ Square 5085, Lots 40 and 61)

July 31, 2025

Pursuant to notice, at its July 31, 2025 public meeting, the Zoning Commission for the District of Columbia (“Commission”) held a virtual public meeting to consider the application (the “Application”) of NRP Properties, LLC (“Applicant”) for a two-year time extension of the deadline to commence construction of the design review approved in Z.C. Order No. 22-08 (the “Original Order”) for the subject property at 4401-4435 Benning Road, N.E. (Square 5085, Lots 40 and 61) (the “Property”).

The Commission reviewed the Application pursuant to Subtitle Z of the Zoning Regulations for 2016, Title 11 of the District of Columbia Municipal Regulations (the “Zoning Regulations” or “ZR-16”). For the reasons stated below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

I. Background

Prior Approvals

1. The Property is located near the juncture of Benning Road, N.E. and East Capitol Street, N.E., and approximately one-half block from the Benning Road Metrorail Station.
2. Pursuant to the Original Order, effective on August 26, 2022, the Commission approved voluntary design review authorizing the construction of a new, 9-story plus penthouse residential building with 109 all-affordable dwelling units (the “Project”).
3. The Original Order required an application for a building permit to be filed by August 26, 2024, and for construction of the Project to commence no later than August 26, 2025.

Parties and Notice

4. The parties to the Original Order were the Applicant and Advisory Neighborhood Commission 7F (the “ANC”).¹

¹ At the time of the Original Order, the Property was located within the boundaries of ANC 7D. Due to ANC re-districting, the Property is now within the boundaries of ANC 7F.

5. On June 12, 2025, the Applicant served the Application on ANC 7F and the D.C. Office of Planning (“OP”) (Exhibit (“Ex.”) 2).

II. The Application

6. On June 12, 2025, the Applicant timely filed the Application requesting a two-year time extension of the Order to extend the deadline by which construction of the Project must commence from August 26, 2025 to August 26, 2027 (Ex. 2-2D).
7. The Applicant asserted that it meets the requirements for a time extension enumerated in Subtitle Z § 705.2 as follows:
 - The extension request was served on all parties and all parties were allowed 30 days to respond (Ex. 2);
 - There have been no changes to the material facts upon which the Commission based its approval of the Original Order, including the applicable Zoning Regulations and Comprehensive Plan (Ex. 2); and
 - There is good cause to grant the requested extension due to the Applicant’s inability to obtain sufficient Project financing despite the Applicant’s good faith efforts to obtain such financing. Additionally, the Applicant has been unable to secure all required government agency approvals due to delays beyond the Applicant’s reasonable control. With respect to financing, the Applicant secured tax-exempt bond financing from the D.C. Housing Finance Agency; however, the bond financing represents only a portion of the capital needed to construct the Project. The Applicant has been unable to finalize the remainder of the Project’s public financing due to significant instability in the real estate market, which has had a particular impact on affordable housing developments like the Project. With respect to government agency approvals, the Applicant applied for a building permit within the timeframe set forth in the Original Order. Yet, permit issuance has been delayed due to encumbrances on the Property, which require the Applicant to coordinate with multiple agencies and subjects the Project to additional layers of review. While the Applicant anticipates permit issuance in Q3 of 2025, the delays in permit issuance are beyond the Applicant’s reasonable control (Ex. 2, 2D).

III. Responses to the Application

8. On July 16, 2025, OP submitted a report recommending approval of the Application. OP agreed that the Applicant demonstrated compliance with the criteria under Subtitle Z § 705.2, including that the Application was served on all parties, there is no substantial change in materials facts, and the Applicant demonstrated good cause for the extension (Ex. 4).
9. ANC 7F did not submit a report on the Application in the case record.

IV. Conclusions of Law

1. Subtitle Z § 705.2 authorizes the Commission to extend the period of an order upon determining that the time extension request demonstrates satisfaction of the requirements

of Subtitle Z § 705.2 and complies with the limitations of Subtitle Z §§ 705.3, 705.4, and 705.6.

2. The Commission concludes the Applicant timely filed the Application prior to expiration of the period to commence construction of the Project approved in the Original Order.
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 the Applicant satisfied the requirement of Subtitle Z § 705.2(a) by demonstrating that it served the extension request on ANC 7F, the only other party to the Original Order, and that the ANC was given 30 days to respond from the June 12, 2025, 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 Order that would undermine the Commission's justification for approving the Order.
6. The Commission concludes the Applicant satisfied the requirement of Subtitle Z § 705.2(b) based assertions in the Application and by OP that there has been no substantial change in any material facts upon which the Commission based its approval in the Original 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 the Applicant satisfied the requirement of Subtitle Z §§705(c)(1) and (c)(2) due to an inability to secure necessary financing despite the Applicant's diligent good faith efforts and an inability to obtain a building permit to construct the Project due to delays beyond the Applicant's reasonable control, respectively. With respect to the former, the Commission agrees the current instability in the real estate market creates challenges in obtaining sufficient financing, which are particularly acute for an all-affordable development like the Project. With respect to the latter, the Commission agrees the Applicant is pursuing a building permit for the Project but the encumbrances and additional coordination have created delays beyond the Applicant's reasonable control.

“Great Weight” to the Recommendation of OP

9. The Commission must give “great weight” to the recommendation 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. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086-87 (D.C. 2016))).
10. The Commission finds OP’s recommendation to approve the Application persuasive and concurs with OP’s judgment.

“Great Weight” to the Recommendation of the ANC

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 this 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. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted)).
12. ANC 7F did not submit a written report into the case record and, therefore, there is nothing to which the Commission can give “great weight.”

DECISION

Based on the case record and the above Findings of Fact and Conclusions of Law, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Applicant’s request for a two-year time extension of Z.C. Order No. 22-08, to extend the validity period and deadline to commence construction until August 26, 2027.

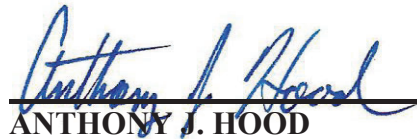
Vote (July 31, 2025): 5-0-0

(Anthony J. Hood, Robert E. Miller, Tammy Stidham, Joseph S. Imamura, and Gwen Marcus Wright to approve.)

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order No. 22-08A shall become final and effective upon publication in the *District of Columbia Register*; that is, on **October 3, 2025**.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



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.