

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 22-28A

1100 South Capitol, LLC

(Two-Year Design Review Time Extension @ Square 698, Lots 814 & 817)
October 10, 2024

Pursuant to notice, at its public meeting on October 10, 2024, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (“Application”) of 1100 South Capitol, LLC (the “Applicant”) for a two-year extension of the time period to file a building permit application and begin construction of the building approved to be located at 1100 South Capitol Street, S.E. (Square 698, Lots 814 and 817) (the “Property”) pursuant to Z.C. Order No. 22-28 (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. BACKGROUND

THE PROPERTY

1. The Property is located on the west side of Square 698 and is bounded by L Street, S.E. to the north, a 15-foot-wide public alley to the east, private property to the south, and South Capitol Street to the west. The Property includes approximately 32,556 square feet of land area and is improved with a surface parking lot. The Property is zoned D-5 and is located within the M and South Capitol Streets Sub Area.

PRIOR APPROVAL

2. Pursuant to the Order, effective February 17, 2023, the Commission approved an application for Design Review, filed pursuant to Subtitle I § 616.8, to develop the Property with a new residential building containing approximately 263 dwelling units, ground floor and rooftop amenity space, and approximately 162 vehicle parking spaces (the “Project”). The Order required a building permit application to be filed for the Project no later than February 17, 2025, and construction to begin no later than February 17, 2026.

PARTIES AND NOTICE

3. The parties to the original application were the Applicant and Advisory Neighborhood Commission (“ANC”) 6D, the ANC in which the Property was located at the time of the original approval. On January 1, 2023, the boundaries of the ANCs were modified, such that the Property is now located within the boundaries of ANC 8F, and across South Capitol Street from ANC 6D. Therefore, both ANCs are “affected” ANCs pursuant to Subtitle Z § 101.8.
4. On August 20, 2024, the Applicant served the Application on ANCs 6D and 8F, the Office of Planning (“OP”), and the District Department of Transportation (“DDOT”), as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2)

II. THE APPLICATION

5. On August 20, 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 no later than February 17, 2027, and start construction no later than February 17, 2028. (Ex. 1-2D3)
6. The Application asserted that it met the requirements under Subtitle Z § 705.2, for the proposed two-year time extension because:
 - The Applicant served the extension request on all parties to the application and all parties were allowed 30 days to respond;
 - There was no substantial change in any of the material facts upon which the Commission based its original approval in the Order; and
 - Good cause justified the Commission in granting the time extension because of the Applicant’s inability to obtain sufficient project financing despite its diligent good faith efforts due to changes in economic and market conditions beyond the Applicant’s reasonable control. The Application stated that following issuance of the Order, impacts to the real estate market associated with the Covid-19 pandemic were ongoing and in many ways worsening. The market overall was plagued with high construction costs, insufficient labor, and supply chain issues. Inflation was high throughout the country, which led to tightened credit, increased borrowing costs, heightened market uncertainty, and a weak lending market. The Application stated that these conditions collectively created an inhospitable market for multi-family residential development. (Ex. 2)
 - For the foregoing reasons, the Application stated that the Applicant had been unable to obtain financing for the Project and move forward with filing the building permit application by the deadline established in the Order. *See* affidavit of Richard Ruben, the managing member of RCM Socap, LLC, which is the managing member of the Applicant (the “Affidavit”). (Ex. 2D)
7. The Application further explained that despite these setbacks, the Applicant continued to move the Project forward by:
 - Completing schematic design and partial design development drawings in mid-2023;
 - Entering into an Access and Protection Agreement with the adjacent St. Vincent de Paul Church in October 2023;

- Submitting an application to the Office of the Surveyor for the District of Columbia in May 2023, for the creation of a single record lot, which is required for development of the Project; and
- Continuing to advance the required site permits with DDOT and the Department of Buildings, including obtaining a sheeting and shoring permit (SH2300013) in June 2024. (Ex. 2)

8. The Application stated that the Applicant was fully prepared to proceed with development of the approved Project once capital markets and construction costs improve, and that the Applicant had already invested substantial resources in the Project, including legal, architectural, engineering, permitting, construction, and other consulting fees, such that there was no financial advantage for the Applicant to not move forward with development of the Project. (Ex. 2)

III. RESPONSES TO THE APPLICATION

9. OP submitted a report dated September 26, 2024 (the “OP Report”) which recommended approval of the Application. (Ex. 4) The OP Report concluded that (i) the extension was properly served on all parties, which were given 30 days to respond; (ii) there had been no substantial changes in any material facts upon which the Zoning 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 good faith efforts, because of changes in economic and market conditions beyond its reasonable control.

10. Neither affected ANC submitted a written report to the case record.

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, 705.4, and 705.6.
2. 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.
3. The Commission concludes that the Applicant satisfied Subtitle Z § 705.2(a) by demonstrating that it served all parties-in this case, ANCs 6D and 8F- on August 20, 2024, and that the parties were given 30 days to respond from the August 20, 2024, date of service.
4. Subtitle Z § 705.2(b) requires that the Commission finds that no substantial change has occurred to any of the material facts upon which the Commission based its original approval of the application that would undermine the Commission’s justification for approving the original application.

5. The Commission concludes 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 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 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.*
7. The Commission concludes, based on the Application and the OP Report, that the Application meets the standards of Subtitle Z §§ 705.2(c)(1) because the Project suffered significant disruption due to impacts to the real estate market associated with the aftermath of the Covid-19 pandemic, which worsened after issuance of the Order. As set forth in the Application, these impacts included high construction costs, insufficient labor, supply chain issues, inflation and tightened credit, increased borrowing costs, and a weak lending market, all of which resulted in the Applicant being unable to obtain project financing. Thus, the Commission concludes that, because of economic and market conditions beyond the Applicant’s reasonable control, the Applicant was unable to comply with the time limits of the Order and needs additional time to move forward with the Project.

“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 § 405.9. (*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*, 141 A.3d 1087) 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))

11. As previously noted, neither affected ANC submitted a report to the case record.

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 deadline to file a building permit application and begin construction of the Project, with the requirement that the Applicant:

- File a building permit application no later than **February 17, 2027**; and
- Start construction no later than **February 17, 2028**.

VOTE (October 10, 2024): 4-0-1

(Tammy Stidham, Robert Miller, Anthony Hood and Gwen Marcus Wright to approve; Joseph Imamura not present not voting)

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 22-28A shall become final and effective upon publication in the *District of Columbia Register*; that is, on January 10, 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

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