

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION



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

Z.C. Case No. 17-21B

As You Like It, LLC

(Two-Year Time Extension for Approved PUD @ Square 498, Lot 52 [501 I Street, S.W.])

October 27, 2022

Pursuant to notice, at its October 27, 2022 public meeting, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of As You Like It LLC (“Applicant”) for a two-year time extension, until November 29, 2024, in which to file for a building permit for the planned unit development (“PUD”) approved by Z.C. Order No. 17-21, as modified by Z.C. Order No. 17-21A. 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”), the Commission approved a consolidated PUD and related map amendment from the R-3 to the MU-4 Zone for the Property, which authorized construction of a mixed-use building including office, rehearsal, education, and costume design space for the Shakespeare Theatre Company (“STC”); approximately 64 for-sale residential units; and approximately 40 on-site and 15 off-site parking spaces (collectively, “Project”). The Project consisted of a four-story main building and four-and-a-half story annex building.
2. Condition E.2 of the Order required the Applicant to file for a building permit by November 29, 2021.
3. Pursuant to Z.C. Order No. 17-21(1), an administrative Covid-19 One-Year Time Extension was granted, pursuant to Subtitle Z § 705.9, which extended the Applicant’s time to file for a building permit by November 29, 2021 to November 29, 2022.

PARTIES AND NOTICE

4. The only party to the Order was Advisory Neighborhood Commission (“ANC”) 6D.¹

¹ United Neighbors of Southwest submitted a request for party status in opposition, which was later withdrawn.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.

5. On September 15, 2022, 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

5. On September 15, 2022, the Applicant timely filed the Application requesting a two-year time extension of the validity of the Order, specifically:
 - To file a building permit application to construct the PUD by November 29, 2024; and
 - To start construction of the PUD by November 29, 2025.
6. The Application stated that although the PUD had been granted a one-year administrative time extension in Z.C. Order No. 17-21(1), the Application was the first request for a discretionary time extension and, therefore, a period of up to two years was permitted under Subtitle Z § 705.3.
7. The Application asserted that it met the requirements, under to Subtitle Z § 705.2, for the proposed two-year time extension because:
 - There has been no substantial change in any material facts upon which the Commission based its original approval of the Order; and
 - Good cause justifies the Commission’s granting the time extension because the PUD has been affected by external events, including:
 - The pandemic and resulting public health emergency, which severely disrupted performing arts organizations, including STC, which shutdown operations for over a year;
 - The existing state of the market and its supply chain disruptions, labor shortages, and inflation; and
 - The challenge of securing sufficient capital to finance the Project given both of the above.

RESPONSES TO THE APPLICATION

7. OP submitted a report dated October 20, 2022, recommending approval of the Application, and concluding there were no substantial changes to the material facts upon which the Commission based its original approval of the Order. (Ex. 4.)
8. By report dated October 11, 2022, and pursuant to a unanimous vote taken at a regularly scheduled and duly noticed public meeting of the same date, ANC 6D supported the Application. (Ex. 5.)

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. 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 has satisfied Subtitle Z § 705.2(a) by demonstrating that it served all parties – ANC 6D – on September 15, 2022, and that ANC 6D was given 30 days to respond from September 15, 2022.
4. 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.
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 of the PUD 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 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) and 705.2(c)(3) because the Applicant suffered significant disruption and financial loss due to the pandemic. Furthermore, inflation, supply chain delays, and labor shortages that characterize the current economic climate have burdened the financing of the Project. Specifically, STC had to divert resources that would have been devoted to the Project to sustaining its operations. These pandemic-related effects, beyond the Applicant’s reasonable control, made financing of the Project and compliance with the original time limits of the Order unachievable.

“GREAT WEIGHT” TO THE RECOMMENDATIONS 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 § 405.8; *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(S)

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) (citation omitted).)
11. The Commission finds ANC 6D’s recommendation to approve the Application persuasive and concurs in its judgment.

DECISION

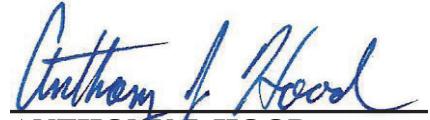
In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for a two-year time extension of Z.C. Order No. 17-21, with the requirement that 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, 2024; 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, 2025.

VOTE (October 27, 2022):

3-0-2 (Anthony J. Hood, Robert E. Miller, and Peter G. May to **APPROVE**; Joseph S. Imamura not present, not voting; third Mayoral appointee seat vacant)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 17-21B shall become final and effective upon publication in the *DC Register*; that is, on November 18, 2022.



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.