

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 20-28A**

Z.C. Case No. 20-28A

**FC 110 N ST, LLC (on behalf of the United States General Services Administration)
(Two-Year Time Extension for Design Review @ Square 743, Lot 856)**

May 30, 2024

Pursuant to notice, at its public meeting on May 30, 2024, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of FC 110 N ST, LLC (on behalf of the United States General Services Administration) (the “Applicant”) for a two-year time extension for the Design Review approved by Z.C. Order No. 20-28 (the “Original Order”) to construct a nine-story mixed-use building with ground floor retail (the “Project”) located in the Southeast Federal Center Zone at Lot 856 in Square 743 (the “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

I. BACKGROUND

PRIOR APPROVAL

1. Pursuant to the Original Order, effective May 21, 2021, the Commission granted Design Review approval to construct the Project on Parcel F in The Yards neighborhood of Southeast DC with a mixed-use office building of a maximum height of 130 feet, approximately 290,261 square feet of gross floor area, a habitable penthouse of approximately 7,210 square feet. The Original Order required the Applicant to file a building permit application for the Project by May 21, 2023, which was timely filed by the Applicant by the deadline; and to commence construction of the Project by May 21, 2024.

PARTIES AND NOTICE

2. In addition to the Applicant, the only other party to the Original Order was Advisory Neighborhood Commission (“ANC”) 6D¹. However, ANC 8F is now the “affected” ANC pursuant to Subtitle Z § 101.8.

¹ When Z.C. Order No. 20-28 was approved, the “affected” ANC pursuant to Subtitle Z § 101.8 was ANC 6D. However, due to ANC redistricting, the “affected” ANC is now ANC 8F and the Property is no longer within the boundary of ANC 6D.

3. On April 22, 2024, the Applicant served the Application on ANC 6D² 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 at 8.)

II. THE APPLICATION

4. On April 22, 2024, prior to the expiration of the validity period of the Original Order, the Applicant filed the Application requesting a two-year extension, until May 21, 2026, to start construction of the Project. (Ex. 2.)
5. The Application stated that it met the standards for a time extension enumerated in Subtitle Z § 705.2 because:
 - The extension request was served on all parties and parties were allowed 30 days to respond;
 - There has been no substantial change in any material facts upon which the Commission based its approval of the Original Order; and
 - Good cause justifies the Commission granting the time extension due to challenges beyond the Applicant’s reasonable control because the Applicant has had difficulty obtaining a tenant and financing for the Project due to the escalation of construction costs and interest rates, paired with reduced demand and increased supply for office space. The Application stated that the Applicant remains committed to moving forward with the proposed office use for the Project and has expended \$6 million on advanced design, permitting, and leasing efforts to date as detailed in the affidavit of the Vice President of Development for the Project. (Ex. 2E.) The Application also included a chart showing the status of development of all Parcels within The Yards, including Parcel F. (Ex. 2C.) (Ex. 2.)

III. RESPONSES TO THE APPLICATION

6. On May 17, 2024, OP submitted a report (the “OP Report”) recommending approval of the requested two-year time extension. The OP Report stated that the Application met the requirements of Subtitle Z § 705.2 because there have been no substantial changes in the material facts upon which the Commission based its original approval, and the Applicant has demonstrated that it has been unable to obtain the necessary financing and secure an office tenant to move forward with the Project due to market conditions beyond its control. (Ex. 5.)
7. Neither ANC 6D nor ANC 8F submitted a written report in response to the Application.

² The Applicant served the Application on ANC 6D out of an abundance of caution; however, ANC 6D is no longer an “affected” ANC as the property is no longer within its boundary.

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. The Commission concludes that the Applicant timely filed the Application prior to the expiration of the validity period for the Design Review approval on May 21, 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 parties are allowed 30 days to respond.
4. The Commission concludes that the Applicant has satisfied Subtitle Z § 705.2(a) by demonstrating that it served all parties, which in this case is only ANC 8F, on April 22, 2024, and that ANC 8F was given 30 days to respond. The Commission notes that ANC 8F did not file a response to the Application; and neither did ANC 6D, which the Applicant served with the Application out of abundance of caution.
5. 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 that would undermine the Commission's justification for that approval.
6. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) based on the Application and the OP Report, which stated there has been no substantial change to the material facts upon which the Commission based its original approval of the Design Review that would undermine the Commission's justification for that approval.
7. Subtitle Z § 705.2(c) requires that an application requesting extension of the time period(s) of an order 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.*

8. The Commission concludes that the Application meets the standards of Subtitle Z §§ 705.2(c)(1) and 705.2(c)(3) because, despite diligent efforts, the Applicant has been unable to secure the necessary office tenant to obtain financing for the Project, due to commercial office market conditions and escalation of construction costs and interest rates. Because of these circumstances beyond the Applicant's reasonable control, the Applicant was unable to start construction of the Project within the time limits established by the Original Order. The Commission agrees that these circumstances constitute good cause for the requested two-year extension of the Original Order.

“GREAT WIGHT” TO THE RECOMMENDATION OF OP

9. 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).)
10. The Commission finds OP’s recommendation to approve the Application persuasive and concurs in the judgment.

“GREAT WIGHT” TO THE RECOMMENDATION OF OP

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. (*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).)
12. ANC 8F did not file 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 Applicant’s request for a two-year time extension of Z.C. Order No. 20-28, to extend the validity period and deadline to start construction of the Project until no later than May 21, 2026.

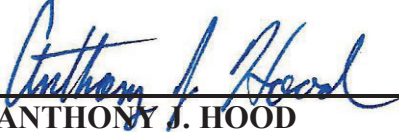
VOTE (May 30, 2024): (4-0-1)

(Tammy Stidham, Anthony J. Hood, 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. 20-28A shall become final and effective upon publication in the *District of Columbia Register*, that is, on June 28, 2024.

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 RESIDENT 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.