

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 17-19A
Z.C. Case No. 17-19A
The Warrenton Group
(Two-Year PUD Time Extension @ Square 5197)
September 14, 2020

Pursuant to notice, at its public meeting of September 14, 2020, the Zoning Commission for the District of Columbia (“Commission”) considered the application (the “Application”) from The Warrenton Group (the “Applicant”) for: a two-year extension of the validity of Z.C. Order No. 17-19 (the “Original Order”) that approved a second-stage planned unit development (“PUD”) and a related map amendment for Lots 1, 64, 65, and 73 in Square 5197, pursuant to Subtitle Z § 705 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified). The Commission considered the Application pursuant to Subtitle Z, Chapter 7. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PRIOR APPROVALS

1. Pursuant to the Original Order, effective July 6, 2018 (the “Effective Date”), the Commission approved a PUD and related map amendment which consisted of the construction of two mixed-use, mixed-income buildings on two parcels (collectively, the “Project”), as follows:
 - Parcel 1 – A 65-foot tall building, with a floor area ratio (“FAR”) of 3.56, including 9,900 square feet of ground-floor retail uses and 151 residential units; and
 - Parcel 2 – A 63-foot tall building with a FAR of 3.35 FAR, including 6,000 square feet of ground-floor retail uses, and 32 residential units. (Exhibit [“Ex.”] 2, 2A.)
2. Condition E.3 of the Original Order limited the validity of the order to two years from the Effective Date, with the Applicant required to:
 - File for a building permit within this two-year validity period - by July 6, 2020¹; and

¹ In response to the COVID-19 pandemic, Z.C. Order No. 20-07 automatically extended the Original Order’s validity period by six months - to January 6, 2021 – but required subsequent extensions to start from the Effective Date.

- Start construction of the Project within three years of the Effective Date - by July 6, 2021.

PARTIES AND NOTICE

3. The only party to the Original Order, other than the Applicant, was Advisory Neighborhood Commission (“ANC”) 7C., the “affected” ANC as defined by Subtitle Z § 101.8.
4. The Applicant served the Application on ANC 7C and the Office of Planning (“OP”) on July 17, 2020; and the ANC Single Member District Commissioner on July 23, 2020 (Ex. 3, 3A.)

II. THE APPLICATION

5. The Application asserted that it satisfied Subtitle Z § 705’s requirement for a two-year time extension of both the two-year period to file a building permit application for the Project and the three-year period to start construction of the Project because:
 - No substantial change had occurred to any of the material facts upon which the Commission based its original approval; and (Subtitle Z § 705.2(b))
 - Good cause exists to justify the Commission’s approval of the Application because the Applicant has been unable to obtain all of the financing required for the Project of its reliance on multiple public funding sources including: (Subtitle Z § 705.2 (c).)
 - The East End Grocery Incentive Act and related East End Grocery Construction Incentive Program (the “Grocery Act”);
 - The Deputy Mayor for Planning and Economic Development’s New Communities Initiative (the “DMPED New Communities Program”);
 - Low-Income Housing Tax Credits (“LIHTC”);
 - New Markets Tax Credit (“NMTC”); and
 - Opportunity Zone Funds.

III. RESPONSES TO THE APPLICATION

OP

6. OP submitted an August 8, 2020, report that recommended approval of the Application because: (Ex. 6.)
 - No substantial change had occurred to the material facts on which the Commission had based its original approval; and
 - The Applicant had provided sufficient evidence of an inability to obtain sufficient financing for the Project due its reliance on public financing sources, and therefore satisfied Subtitle Z § 705.2(c).

ANC

7. ANC 7C did not submit a report to the record.

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. The Commission concludes that the Applicant timely filed the Application on July 17, 2020, prior to the January 6, 2021, expiration of the validity period of the Original Order that the Application seeks to extend, as required by Subtitle Z § 705.2.
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 has satisfied Subtitle Z § 705.2(a) by demonstrating that it had served the only party to the Original Order - ANC 7C - and that the ANC was given 30 days to respond from the July 17, 2020 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 PUD that would undermine the Commission's justification for approving the PUD.
6. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) based on the Application and the OP Report, which stated that no substantial change had occurred to the material facts upon which the Commission had relied in issuing 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 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 Applicant has satisfied Subtitle Z § 705.2(c) by demonstrating that the Project met Subtitle Z § 705.2(c)(1) because the Applicant had been

unable to secure sufficient financing to proceed to the next stage of development and obtain building permits since:

- The Project is dependent on several forms of public financing including the Grocery Act, the DMPED New Communities Program, LITHTC, NMTC, and Opportunity Zone Credits; and
- The allocation and distribution of funds under these programs, particularly the Grocery Act and New Communities program, are beyond the Applicant's control.

GREAT WEIGHT TO RECOMMENDATIONS 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 § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
10. The Commission finds OP's analysis of the Application's compliance with the requirements for a time extension and OP's recommendation to approve the Application persuasive and concurs in that judgement.

GREAT WEIGHT TO WRITTEN REPORT OF THE ANC

11. The Commission must give "great weight" to the issues and concerns raised in the written report of the affected ANC 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 Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
12. Since ANC 7C did not submit a written report to the record, the Commission has nothing to which it can give great weight.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for:

- A two-year time extension of the deadline to file for building permits for the approved PUD from July 6, 2020 to July 6, 2022; and
- A two-year time extension of the deadline to begin construction of the approved PUD from July 6, 2021, to July 6, 2023.

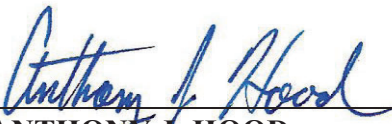
The conditions in Z.C. Order No. 17-19 remain unchanged and in effect.

VOTE (Sept. 14, 2020): **5-0-0** (Anthony J. Hood, Michael G. Turnbull, Robert E. Miller, Peter A. Shapiro, and Peter G. May to **APPROVE**)


In accordance with the provisions of Subtitle Z § 604.9, this Order No. 17-19A shall become final and effective upon publication in the *D.C. Register*; that is, on October 2, 2020.

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.