

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA Application No. 20584
King's Creek
2329 Champlain Street, NW (Square 2563, Lot 113)

HEARING DATE: March 23, 2022¹

DECISION DATE: March 23, 2022

SUMMARY ORDER

RELIEF REQUESTED. The application requests the following relief in order to expand an existing two-story building into a four-story with penthouse and cellar, 33-unit apartment house in the RC-1 zone:

- Special exception from the floor area ratio requirements of Subtitle K § 701.1, pursuant to Subtitle K § 716 and Subtitle X § 901.2
- Special exception from the maximum permitted building height and story requirements of Subtitle K § 702.1, pursuant to Subtitle K § 716 and Subtitle X § 901.2
- Special exception from the lot occupancy requirements of Subtitle K § 703.1, pursuant to Subtitle K § 716 and Subtitle X § 901.2
- Special exception from the court requirements of Subtitle K § 706.1, pursuant to Subtitle K § 716 and Subtitle X § 901.2

The zoning relief requested in this case was self-certified. (Exhibit 4.)²

PRIOR APPLICATIONS. In 2002, BZA Order No. 16869 approved relief from height, FAR, lot occupancy and non-conforming structure requirements to construct a mixed-use retail and residential building on the subject property. This Order was subsequently reversed by the Zoning Commission, under *sua sponte* review. (See Z.C. Order No. 02-37.) In 2006, BZA Order No. 17431 approved variance relief from height, FAR, lot occupancy, courts, and non-conforming structure requirements. The Board approved subsequent modifications and time extensions in Case Nos. 17431A, 18167/17431-B, and 18167/17431-C. The Board's approval ultimately expired.

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 1C, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

¹ The Public Hearing was postponed from December 15, 2021 to March 23, 2022 at the Applicant's request.

² The Applicant withdrew its request for flexibility to convert the penthouse to residential dwelling units following the final action of the Zoning Commission in Z.C. Case No. 14-13E.

NOTICE OF THE APPLICATION AND PUBLIC HEARING. The Board of Zoning Adjustment (the "**Board**") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

ANC REPORT. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 2, 2022, at which a quorum was present, the ANC voted to support the application. (Exhibit 49.) The ANC report raised no issues or concerns. Commissioner Jake Faleschini testified on behalf of the ANC at the Public Hearing.

OFFICE OF PLANNING ("OP") REPORT. OP submitted a report recommending approval of the application. (Exhibit 50.)

DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT. DDOT submitted a report indicating that it had no objection to the application because it concluded that the relief would not result in any adverse impacts to the District's transportation network. (Exhibit 45.) DDOT recommended that the Board adopt conditions related to transportation demand management as well as a condition that the Applicant keep clear an area at the rear of the property to not inhibit alley operations. The Applicant stated at the Public Hearing they are in agreement with the proposed conditions and noted the updated plans indicate the rear triangular area will remain clear, per DDOT's request. The Board adopted these as conditions of part of this Order.

PERSONS IN OPPOSITION. One neighbor, Chris Otten, submitted a letter in opposition to the application. (Exhibit 55.) Mr. Otten also testified in opposition at the Public Hearing.

CONCLUSIONS

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested special exception relief can be granted because:

- It is in harmony with the general purpose and intent of the Zoning Regulations and Map;
- It will not tend to affect adversely the use of neighboring property; and
- Pursuant to Subtitle X § 901.2(c), the relief satisfies the specified conditions for special exception relief.

DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief and therefore **APPROVES** the following relief:

- Special exception from the floor area ratio requirements of Subtitle K § 701.1, pursuant to Subtitle K § 716 and Subtitle X § 901.2
- Special exception from the maximum permitted building height and story requirements of Subtitle K § 702.1, pursuant to Subtitle K § 716 and Subtitle X § 901.2
- Special exception from the lot occupancy requirements of Subtitle K § 703.1, pursuant to Subtitle K § 716 and Subtitle X § 901.2
- Special exception from the court requirements of Subtitle K § 706.1, pursuant to Subtitle K § 716 and Subtitle X § 901.2

Subject to the following **CONDITIONS**:

1. The project shall be constructed in accordance with the plans submitted as Exhibit 52A in the record,³ as required by Subtitle Y §§ 604.9 and 604.10.
2. The Applicant shall implement the following Transportation Demand Management (TDM) Plan, for the life of the project, unless otherwise noted:
 - a. Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average parking rate within a quarter mile;
 - b. Identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators shall act as points of contact with DDOT, goDCgo, and Zoning Enforcement;
 - c. Shall provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year;
 - d. Transportation Coordinators shall develop, distribute, and market various transportation alternatives and options to the residents, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal newsletters or communications;
 - e. Transportation Coordinators shall subscribe to goDCgo's residential newsletter and receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM plan;
 - f. Provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local transit lines (Streetcar, Circulator, and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map; and

³ Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6. In granting the requested self-certified relief subject to the plans submitted with the Application, the Board makes no finding that the requested relief is either necessary or sufficient to authorize the proposed construction project described in the Application and depicted on the approved plans. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any such application that would require additional or different zoning relief from what is granted by this Order.

- g. Long-term bicycle storage rooms shall accommodate non-traditional sized bikes including cargo, tandem, and kids bikes. A bicycle repair station shall be included in the long-term bicycle parking storage room.
3. The Applicant shall keep the triangle area at the rear of the property clear of any structures, fences, bollards, dumpsters, or anything else that would inhibit alley operations and that it shall remain paved.

VOTE: 4-0-1 (Frederick L. Hill, Carl H. Blake, Chrishaun S. Smith, and Robert E. Miller to APPROVE; Lorna L. John not present, not participating)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: March 30, 2022

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD

AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA Application No. 20584-A
King’s Creek, LLC
2329 Champlain Street, NW (Square 2563, Lot 113)

HEARING DATE (20584):	March 23, 2022
DECISION DATE (20584):	March 23, 2022
ORDER ISSUANCE DATE (20584):	March 30, 2022
DECISION DATE (20584-A):	May 15, 2024

SUMMARY ORDER ON REQUEST FOR
TWO-YEAR TIME EXTENSION

ORIGINAL APPLICATION. In Application No. 20584, the Board of Zoning Adjustment (“**Board**” or “**BZA**”) approved the request by King’s Creek, LLC (the “**Applicant**”) for:

- Special exception from the floor area ratio requirements of Subtitle K § 701.1, pursuant to Subtitle K § 716 and Subtitle X § 901.2
- Special exception from the maximum permitted building height and story requirements of Subtitle K § 702.1, pursuant to Subtitle K § 716 and Subtitle X § 901.2
- Special exception from the lot occupancy requirements of Subtitle K § 703.1, pursuant to Subtitle K § 716 and Subtitle X § 901.2
- Special exception from the court requirements of Subtitle K § 706.1, pursuant to Subtitle K § 716 and Subtitle X § 901.2

The Board issued Order No. 20584 on March 30, 2022 (the “**Order**,” Exhibit 5). Pursuant to Subtitle Y § 604.11, the Order became effective ten days after issuance. Pursuant to Subtitle Y § 702.1, the Order was valid for two years from the time it became final.

REQUEST FOR TWO-YEAR TIME EXTENSION. On March 29, 2024, the Applicant submitted a request that the Board grant a two-year extension of Order No. 20584. (Exhibits 2-3.)

NOTICE OF THE REQUEST. Pursuant to Subtitle Y §§ 705.2(a), the Applicant provided proper and timely notice of the request for time extension to the parties to the underlying case. (Exhibit 2.)

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Board of Zoning Adjustment
District of Columbia
CASE NO.20584A
EXHIBIT NO.9

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 1C.

ANC REPORT. The ANC did not submit a written report into the record.

ANC 1C07 Commissioner Jake Faleschini submitted a letter in support of the time extension. (Exhibit 8.)

OFFICE OF PLANNING ("OP") REPORT. OP submitted a report recommending approval of the time extension. (Exhibit 7.)

DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT. DDOT did not submit a written report into the record.

CONCLUSIONS

This request for extension is pursuant to Subtitle Y § 705 of the Zoning Regulations, which permits the Board to extend the time periods in Subtitle Y § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval.

Pursuant to Subtitle Y § 705.2(a), the Applicant shall serve on all parties to the application and all parties shall be allowed 30 days to respond. Pursuant to Subtitle Y § 705.2(b), the Applicant shall demonstrate that there is no substantial change in any of the material facts upon which the Board based its original approval of the application. Finally, under Subtitle Y § 705.2(c), good cause for the extension must be demonstrated with substantial evidence of one or more of the following criteria: (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control; (2) an inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays 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.

Based upon the record before the Board and having given great weight to the appropriate recommendations and reports filed in this case, the Board finds that the Applicant has met the criteria of Subtitle Y § 705.2 to extend the validity of the underlying order.

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

DECISION

BZA ORDER NO. 20584-A
PAGE NO. 3


It is therefore **ORDERED** that the request for a two-year time extension to the validity of the Board's approval in Order No. 20584 is hereby **APPROVED**, and the Order shall be valid until **March 30, 2026**.

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Carl H. Blake, and Robert E. Miller to APPROVE, Chrisaun S. Smith not present, not participating)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 21, 2024

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.