

**MEMORANDUM****TO:** District of Columbia Zoning Commission**FROM:** Maxine Brown-Roberts, Project Manager**DATE:** February 5, 2013**SUBJECT:** Extension and Waiver Request – BZA 18167-B/17431, Kings Creek, LLC
2329-2335 Champlain Street, NW

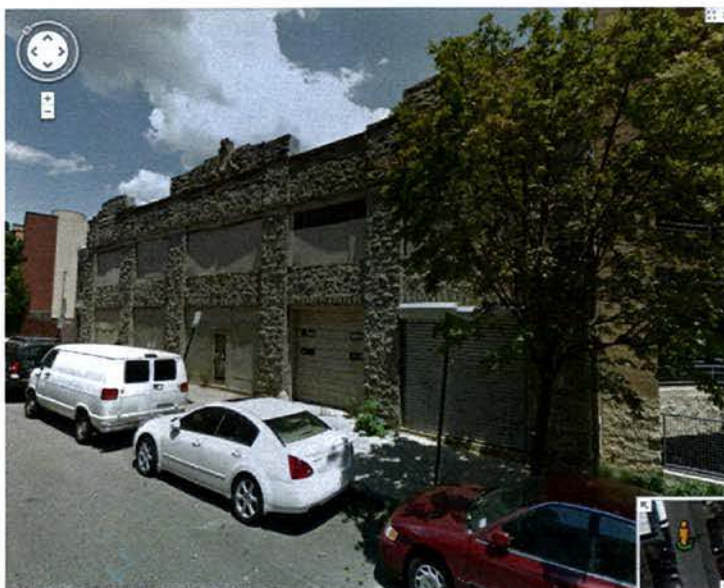
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RECOMMENDATION

The Office of Planning recommends **approval** of the requested two-year extension of BZA Order 18167-B/17431.

SUMMARY TABLE

Applicant:	Kings's Creek, LLC
Address:	2329 & 2335 Champlain Street, NW (Square 2563, Lots 103 & 816)
Ward/ANC/Historic District:	Ward 1, ANC-1C
Project Summary:	31 condominium units and 20 parking spaces.
Order Effective Date:	December 12, 2011
Previous Extension:	Effective December 2, 2008 and March 23, 2011
Order Expiration Date:	December 12, 2012

**EXISTING CONDITIONS**

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18167

EXHIBIT NO. 38

Board of Zoning Adjustment
District of Columbia

CASE NO. 18167
EXHIBIT NO. 38



EVALUATION OF THE EXTENSION REQUEST

Section 3130.6 allows for one extension of a Board of Zoning Adjustment (BZA) approval time periods (two years in this case) but the applicant is requesting a second extension. The applicant was granted a two-year extension which expired on December 12, 2012 and has requested a waiver to be granted a second extension. This second waiver is at the discretion of the BZA.

Section 3130.6 further allows that if “good case” is shown upon the filing of a written request by the applicant before the expiration of the approval; provided that the Board of Zoning Adjustment determines that the following requirements are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond.**

The application submitted to the BZA is dated December 10, 2012 and has been in the public record since filing.

- (b) There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the commission’s justification for approving the original application; and**

The property retains its R-5-B/RC (Reed Cooke Overlay) zone designations and the recommendations of the Comprehensive Plan.

1. BZA Order 17431 was approved on May 2, 2006 to allow the redevelopment of the property to accommodate 22 condominium units. The Order approved:
 - Special Exception under §1404 to allow an increase in height from 40 feet to 50-feet in the Reed Cooke Overlay;
 - Variance from §§ 2001.3 to allow an addition to a nonconforming structure;
 - Variance from §402 to allow an increase in FAR from 1.8 to 2.66 (the existing building has a 1.9 FAR);
 - Variance from §402 to increase the lot occupancy from 60% to 92.8%; and
 - Variance from §406 from the required 10 feet minimum court to approximately 4 feet.
2. BZA Order 17431-A was approved on November 18, 2008 to allow minor modifications to the approved plans. The Applicant submitted that due to the downturn in the residential condominium market they would be unable to market the units as approved. To enable the units to be more marketable and suitable for the rental market, modification to the units were required. The modifications included:
 - Reduction in the size and configuration of the units;
 - Elimination of the penthouses for the 4th floor units and use of the space for resident’s lounge, fitness room, restrooms and access for all residents;
 - Reduction in the area of the former penthouse by 400 square feet; and

- Accommodation of mechanical equipment within each unit.
3. BZA Order 18167/17431-B was approved on March 23, 2011 to allow internal and external modifications to the plans approved under BZA Orders 17431 and 17431-A and a two-year extension until December 12, 2012. These modifications include:
- Increase in the number of dwelling units from 22 to 31 condominium units;
 - Design modifications to the interior and exterior façade of the building;
 - Reduction in the lot occupancy from 92.8% to 88.22% on the 1st and 2nd floors;
 - Elimination of projections from the public space; along Champlain Street; and
 - Reconfiguration of the parking garage resulting in a reduction from 21 spaces to 20 spaces.

In the instant request, the applicant has not proposed any changes to the approved BZA Order 18167/17431-B.

- (c) The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria:**
- (a) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;**
 - (b) 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**
 - (c) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control.**

Behind Tab E of the applicant's submission is a sworn statement in which they state that the property is affected by petroleum contamination from the property to the north. BP products of America (BP) has taken responsibility for the clean-up and along with the applicant has been working the District Department of the Environment (DDOE) to remedy the environmental issues. To date, some work has been completed to remedy the environmental issues but it has not been completed in order for DDOE to issue either a conditional *No Further Action Letter* or a conditional *Case Closure Letter* to enable the granting of a building permit. The applicant states that they have engaged a real estate agency to market the property and have been successful in attracting potential purchasers but in one instance a contract was nullified due to the environmental clean-up not been completed. They now have another potential purchaser who has entered into an agreement to purchase the property and begin construction contingent on clearance by DDOE.

OP therefore believes that the applicant has met the requirements of Section 3103.6 and recommends that the requested two-year extension be granted.