

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 13-18A  
Z.C. Case No. 13-18A  
WBG Wheeler Road, LLC  
(Time Extension for Planned Unit Development @ Square 5925, Lot 65)  
April 24, 2017**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on April 24, 2017. At that meeting, the Commission approved the request of WBG Wheeler Road, LLC for a time extension in which to file a building permit application for the planned unit development (“PUD”), approved by Z.C. Order No. 13-18, until April 17, 2019. The property is situated in Ward 8 and has a combined land area of approximately 32,092 square feet. The property is located at the intersection of Wheeler Road and Barnaby Street, S.E., in the Washington Highlands neighborhood. The property includes approximately 210 feet of linear frontage along Wheeler Road, S.E. and 139 feet of linear frontage along Barnaby Street, S.E. Square 5925, is located in the southeast quadrant of the District and is bounded roughly by Wahler Place to the north, Wheeler Road to the east, Barnaby Street, S.E. to the south and 9<sup>th</sup> Street to the west (“Property”). The time extension request was made pursuant to § 705.2 of the Commission’s Rules of Practice and Procedure as set forth in Subtitle Z of Title 11 DCMR.

**FINDINGS OF FACT**

**BACKGROUND INFORMATION**

1. On December 30, 2013, the Applicant filed an application with the Commission for the consolidated review and approval of a PUD and a related zoning map amendment seeking to rezone the Property from the C-1 Zone District to the C-3-A Zone District. On February 21, 2014, the Applicant submitted an amended application and updated architectural plans, seeking to rezone the Property from the C-1 Zone District to the C-2-B Zone District. The property is situated in Ward 8 and has a combined land area of approximately 32,092 square feet. Fifteen-foot building restriction lines are located along both Wheeler Road, S.E. and Barnaby Street, S.E. Part of the property is currently improved with a barber shop, convenience store, liquor store, pharmacy, and cell phone retailer along Wheeler Road, S.E.
2. The project will be a mixed-use development composed of retail and residential uses. The overall project will have a density of 3.56 floor area ratio (“FAR”), less than the

maximum permitted of 6.0 under the C-2-B PUD requirements, and will include approximately 99,205 square feet of residential uses comprising 85 units, and approximately 15,566 square feet of commercial space. The building will be constructed to a maximum height of 83.5 feet with a maximum of seven stories. The project will have an overall lot occupancy of approximately 67.5% and will include 25 surface parking spaces.

3. Pursuant to Z.C. Order No. 13-18, the Commission granted the consolidated review and approval of a PUD and a related zoning map amendment to rezone Lot 65 in Square 5925 from the C-1 Zone District to the C-2-B Zone District for the construction of a mixed-used development composed of retail and residential uses on the property. The order became effective upon publication in the *D.C. Register* on April 17, 2015. The order requires the Applicant to file a building permit application for the first phase of the development no later than April 17, 2017. Construction of the first phase must begin no later than April 17, 2018.

### CURRENT REQUEST

4. The Applicant filed the present time extension request on March 16, 2017 requesting that it be allowed a three-year PUD time extension<sup>1</sup> to file a building permit application pursuant to Subtitle Z § 705.3. (Exhibit [“Ex.”] 1-2D.)
5. The Applicant noted that the only party in the original case was Advisory Neighborhood Commission (“ANC”) 8E. ANC 8E was served a copy of the time extension request and allowed 30 days to respond.
6. The Applicant stated that there has been no substantial change of material facts upon which the Commission based its original approval of the PUD that would undermine the Commission’s justification for approving the original PUD in 2015.
7. The Applicant submitted evidence that the project has experienced delay beyond the Applicant’s control because of an inability to obtain sufficient project financing for the development. The Applicant has taken many steps to move forward with the development which is the subject of this application, including the following good faith efforts to obtain financing:
  - Working diligently with various existing retailers currently in operation at the property to renegotiate their existing leases in a manner feasible to all parties that will enable development of the site. The Applicant has come to agreement with Wheeler Market, Wheeler Liquor, Metro PCS, Harkum’s Barber & Beauty Salon, and Healing Touch Pharmacy;
  - Engaged in discussions with numerous potential lenders to finance the project such as City First Bank of DC, Lancaster Pollard, and Amalgamated Bank;

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<sup>1</sup> The Applicant applied for a three-year time extension but was granted a two-year time extension.

- Sought funding from a number of institutional lenders and capital sources through Horizon Real Estate Group and AreaProbe, both of which have experience in commercial real estate marketing and funding;
  - Engaged in discussions with a number experienced residential developers, including Gilbane Development, Flaherty & Collins, Dantes Partners, Anacostia Economic Development Corporation (AEDC), and ROSS Development & Investment, to determine their interest in partnering to develop the project; and
  - Spent approximately \$900,000 in preparing the necessary plans and securing PUD approval.
8. In its April 14, 2017 report to the Commission, the Office of Planning (“OP”) recommended approval of a PUD time extension request for two years. OP concluded that the Applicant satisfied the relevant standards of Subtitle Z § 705.2 and that based on the commitment exhibited by the Applicant, the granting of a two-year extension pursuant to § 705.3 was reasonable. (Ex. 4.)

### CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11-Z DCMR § 705.2 are satisfied.

11-Z DCMR §705.2(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. As previously noted, ANC 8E, the only party in the original case, was served with a copy of the time extension request and allowed 30 days to respond.

11-Z DCMR § 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 original PUD. Based on the information provided by the Applicant and OP, the Commission concludes that extending the time period of approval for the approved PUD is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original PUD application.

11-Z DCMR § 705.2(c) requires that the applicant 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.

The Commission finds that there is good cause shown to extend the period of time in which the Applicant is required to file a building permit application. The Commission concludes that the Applicant has not been able to obtain sufficient project financing for the development due to market conditions outside of its control. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11-Z DCMR § 705.2(c)(1).

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.) to give "great weight" to the issues and concerns contained in the written report of an affected ANC. ANC 8E did not submit a written response regarding the Applicant's time extension request therefore there is nothing for the Commission to give great weight to. The Commission is required to give great weight to the recommendations of OP (See D.C. Official Code § 6-623.04 (2012 Repl.)). OP recommended approval of a two-year time extension request, and the Commission concurs in its recommendation. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

### **DECISION**


In consideration of the above Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a two-year time extension of the PUD application approved in Z.C. Order No. 13-18. The consolidated PUD approved by the Commission shall be valid until April 17, 2019, within which time the Applicant will be required to file a building permit application to construct the approved PUD, and construction of the PUD must start no later than April 17, 2020.

On April 24, 2017, upon motion by Commissioner May, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.8 this Order shall become final and effective upon publication in the *D. C. Register* on February 2, 2018.

### **BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
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**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**