

May 31, 2019

Via Regular Mail and IZIS

Anthony Hood, Chairperson
District of Columbia Zoning Commission
441 4th Street, NW, Suite 210-S
Washington, DC 20001

Re: Application of CityPartners 5914, LLC for the Extension of Time of the
Approved Consolidated Planned Unit Development (“PUD”) and Zoning Map
Amendment Application Approved in ZC Order No. 13-08

Dear Chairperson Hood:

CityPartners 5914, LLC (the “**Applicant**”)¹ hereby requests a two year extension of the time period for approval of the project approved by Zoning Commission Order No. 13-08 (the “**PUD Project**”). An application form and applicable agent authorization letters are attached as Exhibit A. A copy of Order No. 13-08 is attached hereto as Exhibit B. This extension request is made pursuant to Subtitle Z §705.2 of the 2016 Zoning Regulations.

A. Background

ZC Order No. 13-08 approved the creation of a significant transit-oriented development at the Congress Heights Metro Station. This project, approved for two phases of construction, will include a mix of residential, retail, and office uses that will serve as a hub for people to live, work and shop in their neighborhood. The residential portion of the project will include 205-215 affordable and market rate residential units located in the building at the intersection of 13th Street and Alabama Avenue SE. This building will include ground floor retail uses, a prominent lobby entrance on Alabama Avenue and small office users along 13th Street. The proposed office building will be eight stories tall. Retail will also be provided on the ground floor of the office building. ZC Order No. 13-08 also approved a Zoning Map Amendment from the R-5-A Zone to the C-3-B Zone.

The Zoning Commission’s unanimous approval of the PUD Project anticipated that development of the office building portion of the project may occur at a different time than the development of the residential portion of the PUD Project. The development of the office building will occur on property that is currently owned by the Washington Metropolitan Area

¹ The Applicant in Zoning Commission Case No. 13-08 was Square 5914, LLC. The interests of Square 5914, LLC were transferred to CityPartners 5914, LLC.

Transit Authority (Parcels 229/160, 229/103, and 229/151) which will be acquired by the Applicant, and Parcel 229/153 - which is currently owned by the Applicant. Condition No. 5 of ZC Order No. 13-08 stated:

“The PUD shall remain valid for three years from the effective date of this Order, during which the Applicant must file for a building permit for the construction of the first building, and construction must begin within four years of the effective date of this Order for the PUD to remain valid. The PUD shall be vested as to any building or buildings for which construction has timely begun. Thereafter, for the PUD to remain valid, the Applicant must file for a building permit for the second building within five years of the effective date of this Order, and construction must begin within six years of the effective date of this Order.

The Zoning Commission’s approval of the PUD Project in ZC Order No. 13-08 became effective on June 5, 2015. In order for the PUD to remain valid, an application for a building permit for the construction of one of the buildings in the PUD Project was required to be filed prior to June 5, 2018 and construction must begin by June 5, 2019. On June 1, 2018, a Foundation-to-Grade Building permit application was filed with the Department of Consumer and Regulatory Affairs (FD #1800081). For the reasons described below, the Applicant is unable to start construction of the PUD Project by June 5, 2019 and is pursuing this time extension request.

B. Standards for Time Extension Request Approval

The standards for a time extension are enumerated in Subtitle Z §705.2 of the 2016 Zoning Regulations. The Commission is authorized to extend a PUD provided that:

- “The extension request is served on all parties to the application by the applicant and all parties are allowed thirty (30) days to respond;
- There is no substantial change in any of the material facts upon which the Commission based its original approval of the application that would undermine the Commission’s justification for approving the original application; and
- The applicant demonstrates with substantial evidence one (1) or more of the following criteria:
 - “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;
 - 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

- 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.”
(Subtitle Z §705.2)

C. Time Extension Request and Applicant's Satisfaction of the Standards for Granting Time Extension

The Applicant requests that it be allowed until June 5, 2021, to commence construction activity related to the development of the PUD Project.

1. Service on Parties

The parties in the original case were the Alabama Avenue/13th Street Tenants Coalition (“**Coalition**”) and Advisory Neighborhood Commission (“**ANC**”) 8E. As shown in the attached Certificate of Service, this application is being served on those parties.

2. No Substantial Change of Material Facts

Since the Zoning Commission's approval of the PUD Project in 2015, there has been no substantial change of material facts that undermine the Zoning Commission's approval of the PUD Project. The factors relevant to the Zoning Commission's approval of the PUD and Zoning Map Amendment application have not changed. No modifications have been made to the approved PUD Project or to the Zoning Regulations, nor have modifications been made to the Comprehensive Plan, that impact the Zoning Commission's approval of the PUD Project.

3. Good Cause Shown

One of the original members of the applicant in ZC Case No. 13-08 was an entity related to Sanford Capital, which owned interests in the residential buildings around the Congress Heights Metro Station that were part of the land included in the PUD Project. By 2017, Sanford Capital related entities had defaulted on various loans and the residential properties on the site were placed in court-ordered receivership. The Applicant realized that Sanford Capital was not going to change its behavior regarding its maintenance and operation of the residential buildings on the Property. Therefore, the Applicant took ownership of these apartment buildings in December 2017. The Applicant has removed the Sanford Capital related entities from the project entirely. Sanford Capital has no interest, ownership, or potential future ownership interest in the PUD Project.

However, in taking possession of the residential parcels, the Applicant inherited the litigation that the Sanford Capital related entities were involved in related to those properties.

There are currently two cases pending before the DC Superior Court regarding those properties. These cases are expected to be resolved over the next 12 months through mediation, settlement with the tenants, and/or Superior Court action. It is important to note that the Applicant (and the principals of CityPartners 5914, LLC) had no control, ownership, or management responsibilities of those residential buildings prior to December 2017 and did not create the housing conditions that led to the appointment of the Receiver.

Since taking ownership of the residential properties, the Applicant has offered the Tenant Association the right to purchase the buildings through TOPA, and has brought a settlement offer to the Tenant Association. At this point, all of the former tenants in the buildings that were formerly owned by Sanford Capital have been relocated to other locations in close proximity to the PUD Project, with all relocation costs and expenses paid by the Applicant. The Applicant's current proffers to the ten former tenant member households who make up the Tenant Association go well beyond the proffers that were approved in ZC Case No. 13-08. Below is the Applicant's standing offer to these former tenants:

- CityPartners 5914, LLC will pay \$100,000.00 to each Tenant Association member household;
- CityPartners 5914, LLC will pay the taxes on the initial payment of the \$100,000 fee, up to \$10,000 per Tenant Association member household;
- CityPartners 5914, LLC committed to and has paid for the relocation and moving costs for each Tenant Association member household;
- CityPartners 5914, LLC will also allow tenants to move back into the beautiful new apartment building at the Congress Heights Metro site, at the same rent they were paying to live in the existing buildings. Increases in rent will be subject only to annual rent increases equal to the amount of the "automatic" rent increase allowed by DC's rent control law;
- CityPartners 5914, LLC has also invited tenants to invest in and participate in the new development, with a minimum investment of \$10,000. Their investment would be considered as equity in the new project, and tenants could receive a preferred interest rate of 7%; and
- CityPartners 5914, LLC will arrange for and cover costs for a financial consultant—if requested—to help each Tenant Association member household decide how best to invest their \$100,000 payment.

While the Applicant continues to pursue negotiations with the Tenant Association in order to resolve the two pending Superior Court cases as expeditiously as possible, the existence of these cases renders the Applicant unable to start construction of the PUD Project by June 5, 2019 for the following reasons.

- It is not possible to secure construction financing without a resolution to the TOPA notice that the Applicant provided to the tenants in June of 2018, and a reconciliation as to whether the tenants will negotiate to purchase the residential buildings to redevelop the sites themselves. If the PUD expires, the development opportunity is lost for the

Applicant, but it is also lost for the tenants, if they decide they want to develop the site. If the PUD expires, all parties lose with no benefit realized for the tenants, community or the city.

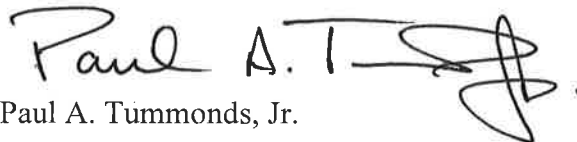
- As part of the outstanding litigation, the tenants' attorneys have filed a Lis Pendens action which has clouded the title of the residential properties. This cloud prevents title insurance and without title insurance, the Applicant has not been able to close on financing for the project.
- One of the pending Superior Court cases is related to the continued placement of a court appointed Receiver to remediate mold and resolve any housing code violations in the residential buildings. This litigation continues despite the fact that the tenants have stated on the record that if the tenants exercise their TOPA rights and purchase the buildings, they intend to tear them down. While the Receiver has had full and unilateral control of the residential properties since November 2017, the buildings have continued to receive housing code violations and fines. In addition, under the direct control and management of the Receiver, the building at 1331-1333 Alabama Avenue was severely damaged by fire that has rendered all of the 24 units uninhabitable. The Applicant has filed an injunction with the Court asking that the Receiver be removed for negligence and malfeasance and that the two fire damaged buildings not be renovated. In any case, the Applicant cannot start construction as it is prohibited under the Receivership statute to assert any management or control on site until the Receiver completes his work, or is removed to allow for the community-supported, transit oriented, mixed-income redevelopment of the site. The Applicant has funded the Receiver's account for operations and for the completion of his plan. The Applicant estimates that the Receiver will complete his work within six months.

This information is sworn to by an affidavit of Geoffrey Griffis, Managing Member of CityPartners 5914, LLC which is attached as Exhibit C.

D. Conclusion

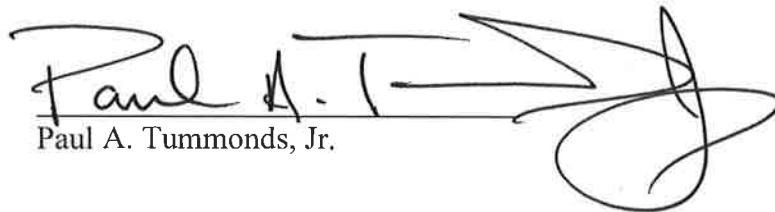
The Applicant believes that the information provided in this application satisfies the "good cause" requirements of Subtitle Z §705. Please feel free to contact the undersigned if you have any questions or comments regarding this application.

Respectfully Submitted,


Paul A. Tummonds, Jr.

Certificate of Service

I hereby certify that I sent the foregoing document to the addresses below on May 31, 2019 by first class mail.


Paul A. Tummonds, Jr.

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