

MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: ^{JLS} Jennifer Steingasser, Deputy Director Development Review & Historic Preservation
DATE: May 31, 2019
SUBJECT: **Time Extension Request** – PUD 13-18B – 4129 Wheeler Road, S.E
Waiver Request from Z §705.5 to permit a second extension of more than one year

BACKGROUND

Address	4129 Wheeler Road, S.E.
Applicant:	WBG Wheeler Road, LLC
Legal Description	Square 5925, Lot 0065
Ward / ANC	Ward 8 /ANC 8E
Project Summary	The Commission approved a PUD and related map amendment under the ZR-58 Regulations from the C-1 (MU-4) to the C-2-B (MU-6) zone to develop the subject property as a mixed-use, 7-story building with 15,566 square feet of commercial space and 99,205 square feet devoted to
Effective date of Order/ Expiration Date	April 17, 2015/ April 17, 2017
Previous Extensions	ZC 13-18A (Effective February 2, 2018. Building permit to be filed no later than April 17, 2019 and construction to start no later than April 17, 2020).
OP Recommendation	To allow the necessary time to secure the project’s financing, OP recommends approval of a second extension for no more than two years.



Existing Site Condition (2019)

EVALUATION OF THE EXTENSION REQUEST

Subtitle Z, § 705.1

The extension of a PUD is allowed for “good cause” shown upon the filing of a written request by the applicant before the expiration of the approval; provided that the Zoning Commission 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 Zoning Commission is dated May 2, 2019 and has been in the public record since filing. The Certificate of Service is attached to the request and identifies that the party, ANC 8E was also served on May 2, 2019.

- (b) There is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the commission’s justification for approving the original PUD.**

Zoning Regulations:

The consolidated PUD was approved under the 1958 zoning regulations. The extension request is being procedurally reviewed under the 2016 Zoning Regulations. The criteria under which an extension request is reviewed are the same under both sets of regulations. However, the permitted number of time extensions requests has changed. Under Subtitle Z, § 705.5, no more than two extensions may be requested for a PUD **and** the second extension may be approved for no more than one year. The applicant requested a second extension for two years which requires a waiver from this requirement. The applicant has requested the waiver and OP supports the waiver herein.

Comprehensive Plan:

There has been no substantial change to the Comprehensive Plan since the project’s approval that would affect the material facts upon which the project was approved.

Surrounding Development:

There has not been substantial new development near the site since the project was approved.

The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in Subtitle Y, § 705.2 (c)

One or more of the following criteria must be met:

- (1) An inability to obtain sufficient project financing for the planned unit 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 planned unit development by the expiration date of the planned unit development order because of delays in the governmental agency approval process that are beyond the applicant’s reasonable control;*

(3) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the planned unit development order.

Subtitle Z Section 705.5

The applicant has not been successful to date in acquiring project financing. An affidavit has been submitted documenting the commitment to secure financing for the project, including from conventional banking establishments and through potential partnerships with other developers. Efforts are ongoing to secure project financing and an additional two years are requested to obtain financing, begin and complete the permit process and initiate construction of the proposed project.

Given the commitment exhibited in the submitted sworn affidavit (Exhibit 2C), the requested two-year extension would be reasonable.

JS/kt