

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 20-09A**

**Wagner, LLC**

**(Two-Year Time Extension for Approved Consolidated Planned Unit Development and  
Related Map Amendment @ Square 5740, Lot 337)  
October 10, 2024**

Pursuant to notice, at its public meeting on October 10, 2024, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (“Application”) of Wagner, LLC (the “Applicant”) for a two-year extension of the time period to begin construction of a Planned Unit Development (“PUD”) approved for property located in Square 5740, Lot 337 (the “Property”) pursuant to Z.C. Order No. 20-09 (the “Order”).

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**I. BACKGROUND**

**PRIOR APPROVAL**

1. Pursuant to the Order, effective October 29, 2021, the Commission approved a consolidated PUD with a related map amendment from the R-3 to the RA-2 zone, to permit construction of a five-story apartment building, 100% of which will be dedicated to seniors with incomes not to exceed 60% median family income (“MFI”) (the “Project”). The Order required a building permit application for the Project to be filed by October 29, 2023, and construction of the Project to commence by October 29, 2024.
2. The Applicant timely filed a building permit application for the Project on May 14, 2021, and on April 22, 2022, the Department of Buildings issued a building permit, which has been extended three times and remains valid.

## **PARTIES AND NOTICE**

3. The parties to the original application were the Applicant and Advisory Neighborhood Commission (“ANC”) 8B, the ANC in which the Property was located at the time of the original approval, and thus the “affected” ANC pursuant to Subtitle Z § 101.8.
4. On September 5, 2024, the Applicant served the Application on ANC 8B, the Office of Planning (“OP”), and the District Department of Transportation (“DDOT”), as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2, 3)

## **II. THE APPLICATION**

5. On September 5, 2024, the Applicant timely filed the Application requesting a two-year time extension of the validity of the Order, such that if approved the Applicant would be required to begin construction no later than October 29, 2026. (Ex. 1-2C)
6. The Application asserted that it met the requirements under Subtitle Z § 705.2, for the proposed two-year time extension because: (Ex. 2, 2C)
  - The Applicant served the extension request on all parties to the application and all parties were allowed 30 days to respond;
  - There was no substantial change in any of the material facts upon which the Commission based its original approval of the Order; and
  - Good cause justified the Commission in granting the time extension because of the Applicant’s inability to obtain sufficient project financing despite its diligent good faith efforts due to challenges with obtaining the significant subsidy required from both Federal and District sources to finance an all affordable seniors building that were beyond the Applicant’s reasonable control. The Application stated that despite starting the process to obtain the necessary financing in 2021, it was not until May of 2024 that all the necessary financing pieces were finalized such that the Applicant anticipates being able to close on these financings by the first quarter of 2025. *See* Affidavit of Robert J. Miller, Manager of Wagner, LLC.

## **III. RESPONSES TO THE APPLICATION**

7. OP submitted a report dated September 25, 2024 (the “OP Report”) which recommended approval of the Application. (Ex. 6) The OP Report concluded that (i) the extension was properly served on all parties, which were given 30 days to respond; (ii) there had been no substantial changes in any material facts upon which the Zoning Commission based its original approval that would undermine its justification; and (iii) the Applicant demonstrated with substantial evidence its inability to obtain sufficient project financing, following its good faith efforts, because circumstances outside of its reasonable control resulted in the financing approval process taking longer than expected.
8. ANC 8B did not submit a written report to the case record.

## CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the time period of an order upon determining that the time extension request demonstrated satisfaction of the requirements of Subtitle Z § 705.2 and compliance with the limitations of Subtitle Z §§ 705.3, 705.5, and 705.6.
2. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that all parties are allowed 30 days to respond.
3. The Commission concludes that the Applicant satisfied Subtitle Z § 705.2(a) by demonstrating that it served all parties - in this case, ANC 8B - on September 5, 2024, and that the parties were given 30 days to respond from the September 5, 2024 date of service.
4. Subtitle Z § 705.2(b) requires that the Commission finds that no substantial change has occurred to 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.
5. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) because there has been no substantial change to the material facts upon which the Commission based its original approval of the Order that would undermine the Commission's justification for that approval.
6. Subtitle Z § 705.2(c) requires that an application 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 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.*
7. The Commission concludes, based on the Application and the OP Report, that the Application meets the standards of Subtitle Z §§ 705.2(c)(1) and (3) because challenges associated with obtaining the significant subsidy required from both Federal and District sources to finance an all affordable seniors building that were beyond the Applicant's reasonable control resulted in the Applicant being unable to obtain project financing within the time limits of the Order. However, the Application stated that all of the necessary financing pieces have been finalized such that the Applicant anticipates being able to close

on these financings by the first quarter of 2025. Thus, the Commission concludes that circumstances outside of the Applicant's reasonable control resulted in the financing approval process taking longer than expected; therefore, the Applicant was unable to comply with the time limits of the Order and needs additional time to move forward with the Project.

### **"GREAT WEIGHT" TO THE RECOMMENDATION OF OP**

8. The Commission is required to give "great weight" to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990. (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.9. (*Metropole Condo. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016))
9. The Commission finds OP's recommendation to approve the Application persuasive and concurs in that judgment.

### **"GREAT WEIGHT" TO THE WRITTEN REPORT OF THE ANC**

10. The Commission must give "great weight" to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole*, 141 A.3d 1087) The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to encompass only legally relevant issues and concerns." (*Wheeler v. District of Columbia Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted).)
11. As previously noted, ANC 8B did not submit a report to the case record.

### **DECISION**

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Applicant's request for a two-year extension of the deadline to begin construction of the Project, with the requirement that the Applicant start construction no later than **October 29, 2026**.


**VOTE (October 10, 2024): 4-0-1**

(Anthony Hood, Robert Miller, Tammy Stidham, and Gwen Wright to approve; Joseph Imamura not present, not voting.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 20-09A shall become final and effective upon publication in the *District of Columbia Register*; that is, on December 27, 2024.

**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**

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS THE D.C. HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (THE “ACT”). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE 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. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.