

April 17, 2019

VIA HAND DELIVERY

Zoning Commission of the
District of Columbia
441 4th Street, N.W.
Suite 200-S
Washington, DC 20001

Re: **Request for Extension of Time to File Building Permit For Consolidated
Planned Unit Development at Square 5925, Lot 65, Zoning Commission
Order No. 13-18/13-18A**

Dear Members of the Zoning Commission:

On behalf of WBG Wheeler Road, LLC (the "Applicant"), the owner of Lot 65 in Square 5925 (Formerly Lots 820 & 821 in Square 5925), this letter serves as a request for a two-year extension of the time period in which to file a building permit for the construction of a mixed-use development composed of retail and residential uses, which was approved in Zoning Commission Order No. 13-18/13-18A ("Order No. 13-18/13-18A "). This request, if approved, would require that an application for a building permit for the approved building must be filed no later than April 17, 2021, and construction must be started no later than April 17, 2022. A copy of Order No. 13-18/13-18A is attached as Exhibit A/B.

This request is filed pursuant to Section 2408.10 of the Zoning Regulations for good cause shown as described in this application. A completed application form and a check in the amount of \$520.00 made payable to the D.C. Treasurer for the requisite filing fee pursuant to Section 3040.5 of the Zoning Regulations are also enclosed.

I. INTRODUCTION

A. Factual Background

On December 23, 2013, the Applicant filed an application seeking consolidated review and approval of a planned unit development ("PUD") and a related zoning map amendment regarding Lot 65 in Square 5925 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. On, March 16, 2017, the Applicant submitted a PUD Time Extension. 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 9th

Street to the west. 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, SE.

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.

Pursuant to Order No. 13-18, the Zoning Commission granted the consolidated review and approval of a PUD and a related zoning map amendment to rezone Lot 0065 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. Pursuant to Order No. 13-18A, the Zoning Commission granted a two year PUD Extension. The Order became effective upon publication in the *D.C. Register* on February 2, 2018. The Order requires the Applicant to file a building permit application no later than April 17, 2019. Construction of the PUD must start no later than April 17, 2020. As discussed in more detail below, the Applicant is requesting a two year time extension based upon unexpected delays beyond the Applicant's control.

B. Jurisdiction of the Zoning Commission

Section 2408.10 of the Zoning Regulations authorizes the Zoning Commission to extend the time periods set forth in Section 2408.8 (two year requirement to file a building permit application) and Section 2408.9 (three year requirement to begin construction), provided the following conditions 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;
- (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; and
- (c) The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in §2408.11.

The sole substantive criterion for determining whether a PUD should be extended is whether there exists "good cause shown." The Zoning Regulations define "good cause shown" in §2408.11, as evidence of one or more of the following:

- (a) 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;
- (b) 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; or
- (c) The existence of pending litigation or such other condition 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.

II. THIS EXTENSION REQUEST WAS SERVED ON ALL PARTIES

Other than the Applicant, the only party to this case was Advisory Neighborhood Commission 8E ("ANC 8E"). As indicated on the Proof of Service attached hereto, the Applicant has served this request for an extension of time on ANC 8E.

III. THERE IS GOOD CAUSE FOR EXTENSION OF THE PUD VALIDITY

A. The Project Has Experienced Delay Beyond Applicant's Control

Section 2408.11 (a) authorizes the grant of an extension of PUD validity for projects confronting difficulties with financing based upon changes in economic and market conditions beyond an applicant's control. The Applicant has taken many steps to move forward with the development which is the subject of this application, as set forth in the Affidavit of Applicant in Support of Two-Year Extension of Time, by Dinesh Sharma, Managing Member of WBG Wheeler Road, LLC, attached as Exhibit C. The steps taken by the Applicant include the following:

- 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, and Healing Touch Pharmacy;
- Engaged in discussions with numerous potential lenders to finance the project such as City First Bank of DC, Lancaster Pollard, Amalgamated Bank;

- Sought funding from a number of institutional lenders and capital sources through Horizon Real Estate Group and AreaProbe, both of which have experience in the Commercial Real Estate Marketing & Funding.
- Engaged in discussions with a number experienced residential developers, including Gilbane Development, Flaherty & Collins, Dantes Partners, Anacostia Economic Development Corporation (AEDC), ROSS Development & Investment, Horning Brothers to determine their interest in partnering to develop the project.
- We have been exploring opportunity zone funding for this project.
- Spent over one million to secure and maintain the PUD approval.

Despite these substantial efforts, and as the Zoning Commission has recognized in approving recent extension requests, the real estate market particularly in Ward 7 & Ward 8 of District has been subject to, and continues to suffer from, severe financing, construction, and leasing impediments. As set forth in the letter attached as Exhibit C, the Applicant has worked with Horizon Real Estate Group and AreaProbe who have been involved in seeking financing in an attempt to secure financing for the project. However, due to continuing economic conditions, those efforts have been unsuccessful. Although a large number of projects in DC have been able to secure financing, east of the river has continued to be sluggish and uncertain due to a number of factors, including economic uncertainties, depressed leasing activity, slow/no job opportunities.

Thus, the approved mixed-use development cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control. Indeed, no segment of the real estate market has escaped the frozen credit markets, including retail and residential projects. Moreover, although a number of projects have been able to progress, development of new buildings in emerging neighborhoods such as Ward 8 in the Washington, DC area has stalled. Nevertheless, the recovery is expected to continue, with the District among the leading markets in the country. Therefore, this request for extension satisfies the sole criterion for good cause shown as set forth in Section 2408.11(a) of the Zoning Regulations.

B. No Substantial Changes to Approved PUD

In addition to requiring the demonstration of "good cause," §2408.10 of the Zoning Regulations requires the following:

(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.

The extension is requested in order to enable the Applicant to continue its diligent efforts

to secure the necessary project financing and tenants. Moreover, there has been no substantial change in any of the material facts upon which the Zoning Commission based its approval of the project, and the Applicant remains committed to moving forward with the project and fully complying with the conditions and obligations imposed as part of the PUD approval.

C. No Hearing is Necessary

Section 2408.12 of the Zoning Regulations provides:

The Zoning Commission shall hold a public hearing on a request for an extension of the validity of a planned unit development only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the planned unit development concerning any of the criteria set forth in §2408.11 . The hearing shall be limited to the specific and relevant evidentiary issues in dispute.

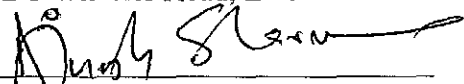
A hearing is not necessary for this request since there are no material factual conflicts generated concerning any of the criteria set forth in §2408.11. There is no dispute that: (1) the Applicant has been unable to secure the necessary project financing for the project at this time, and (2) there are significant impediments in the market place to proceeding with the project at this time. Thus, there cannot be any material factual conflicts generated concerning any of the criteria by which the Zoning Commission is required to consider this request.

IV. CONCLUSION

In light of this demonstration of good cause and for the reasons stated herein, WBG Wheeler Road, LLC respectfully requests that the Commission approve a one-year extension of time to file a building permit for the first phase of the development, such that an application must be filed for a building permit no later than April 17, 2020, and construction must begin on the first phase no later than April 17, 2021. No hearing is necessary as there are no material factual issues in question.

Respectfully Submitted,

WBG Wheeler Road, LLC



Dinesh Sharma

Attachments


cc: Jennifer Steingasser, Office of Planning (Via Hand Delivery; w/attachments)

PROOF OF SERVICE

I hereby certify that on April 17, 2019, a copy of the foregoing Applicant's Request for Extension of Time was served by first class mail on the following at the address stated below:

Advisory Neighborhood Commission 8E
1310 Southern Avenue, SE
Room G047
Washington, DC 20032

Commissioner Karlene Armstead
ANC/SMD 8E06
559 Foxhall Place, SE
Washington DC 20032



Dinesh Sharma
WBG Wheeler Road, LLC