

**MEMORANDUM**

**TO:** District of Columbia Zoning Commission  
**FROM:** <sup>JLS</sup> Jennifer Steingasser, Deputy Director Development Review & Historic Preservation  
**DATE:** June 1, 2018  
**SUBJECT:** ZC 08-07D, Building 1 - PUD Extension of Time

Address	2255 Martin Luther King Jr., Avenue, SE
Applicant	Four Points Development LLC
Legal Description	Square 5785, Lots 839 and 906
Ward/ANC	Ward 8, ANC-8A
Project Summary	Building 1 lot would be developed with a six-story (65 feet), 68,263 gross square foot building at a density of 2.85 FAR. The building would accommodate 71 units consisting of six studio units; 49, one-bedroom units; and 16, two-bedroom units. The development would provide a mixture of market rate and affordable units with 80% of the units (56) reserved for households earning between 30% and 60% of AMI while the remaining 15 units would be for households earning above 60% of AMI. A minimum of 6 units would be workforce housing for teachers and live/work units for artists. The residences would be supported by 26 below grade parking spaces and 37 bicycle spaces.
Order Effective Date	May 22, 2015
Previous Extension	None
Order Expiration Date	May 22, 2018

**PHOTOS OF SITE:**



**Photograph of Site in 2008**



**Current Photograph of Site**

## **EVALUATION OF THE EXTENSION REQUEST**

At Z.C. Order No. 08-07A, Decision No. C.1. (effective on May 22, 2015) the Zoning Commission required that a building permit application for Building 1 be filed no later than May 22, 2017, with construction to begin no later than May 22, 2018. A building permit application was filed on June 15, 2015, however, the deadline for construction to begin has not been met. The applicant requests an extension such that construction must commence by May 22, 2020.

### **Subtitle Z, § 705.2**

Subtitle Z, § 705.2 allows an extension of a PUD if “good cause” is 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 1, 2018 and has been in the public record since filing. As shown on the Certificate of Service provided by the Applicant in Exhibit 1, ANC 8A has been served.

- (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. Procedurally, the extension request is being 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.

### **Comprehensive Plan:**

There has been no change to the Comprehensive Plan Future Land Use Map designation of the site for mixed use; medium density residential and medium density commercial development.

### **Surrounding Development:**

There have been no other recorded changes to adjacent properties or along this area of MLK Avenue, SE since the original approval.

- (c) **The applicant demonstrates with substantial evidence one (1) or more of the following criteria:**

- (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; or*
- (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.*

At Exhibit 1E, the applicant provided an affidavit stating that litigation between the business partners has prevented the project from moving towards construction. In the fall of 2015, a disagreement developed between the development partners regarding the proposed phasing and uses for the entire PUD Site. That dispute was resolved through a First Amendment to Option Agreement, dated September 21, 2015. However, another dispute reemerged which resulted in several months of negotiation. On January 13, 2016, a complaint against the development partner was filed in the District of Columbia Superior Court which was settled and dismissed on October 18, 2016 and concluded with an amendment to Four Points' Option Agreement on September 18, 2017. The applicant states that since then they have been focused on the Second Stage PUD application for Building 4, (ZC No. 08-07C) which the Zoning Commission set down for public hearing on May 14, 2018.

Prior to the beginning of the litigation, steps were taken towards obtaining a building permit and financing. Steps taken are shown in Exhibit 1E and summarized on the tables below.

Building Permit

<b>Date</b>	<b>Permit</b>	<b>Within ZC Exhibit 1E</b>
June 15, 2015	Building Permit Application, satisfying ZC Order 08-07A, Condition C.1 (Permit No. B1508906)	Exhibit A of the Affidavit
August 28, 2015	Sheeting and Shoring permit application DCRA (Permit No. SH1500070)	Exhibit C to the Affidavit
August 27, 2015	Sheeting and Shoring permit application with DDOT (Tracking No. 114354).	Exhibit D to the Affidavit
August 31, 2015	Sheeting and Shoring permit application with DC Water (Tracking No. 15-329563)	Exhibit F of the Affidavit
November 25, 2015	Tree removal permit to DDOT, approved February 10, 2016 (Permit No. PA119720)	Exhibit G to the Affidavit
December 1, 2015	Payment of \$13,540.53 for the issuance of the building permit	Exhibit H to the Affidavit
December 18, 2015	Public space permit application with DDOT, approved with conditions on April 28, 2016 (Tracking No. 120696)	Exhibit I to the Affidavit)

Financing

<b>Date</b>	<b>Financing</b>	<b>Within ZC Exhibit 1E</b>
November 1, 2014	Request to DCHFA for acquisition and new construction financing.	Exhibit J to the Affidavit
March 24, 2015	DCHFA issued a resolution confirming the Applicant’s eligibility to receive Low Income Housing Tax Credits, and recommending the issuance of both taxable and tax-exempt multifamily housing mortgage revenue bonds in an amount up to \$14,000,000.00 for the project	Exhibit J to the Affidavit
October 8, 2014	Letter from DHCD indicating that funding had been reserved for the development of Building 1, with the final funding recommendation to be determined at a later date.	Exhibit K to the Affidavit
September 2, 2016	Letter to Enterprise Community Investment outlining the terms and conditions under which Enterprise could make an equity investment in Building 1.	Exhibit M to the Affidavit
February 24, 2017,	Letter from Bellwether Enterprise submitting a non-binding debt financing proposal for Building 1.	Exhibit N to the Affidavit

With the conclusion of the litigation, the applicant anticipates that twenty-four months is sufficient time to have all lapsed permits reinstated, reengage financiers, and begin construction. In consideration of the evidence presented, OP recommends **approval** of the requested PUD time extension for ZC Order 08-07A from May 22, 2018 to May 22, 2020.

JS/mbr