

**Memorandum**

**TO:** District of Columbia Zoning Commission  
**FROM:** <sup>JLS</sup> Jennifer Steingasser, Deputy Director Development Review & Historic Preservation  
**DATE:** July 25, 2019  
**SUBJECT:** First Extension Request – PUD Case 13-08A, Square 5914 Congress Heights SE

Address:	13 <sup>th</sup> ST SE and Alabama Ave SE
Applicant:	CityPartners 5914, LLC
Legal Description:	Square 5914, Lots 6&7 Parcels 229/160, 229/161, 229/103, 299/151, 299/153
Ward / ANC	Ward 8 / ANC 8E
Zoning:	Base Zone – R-5-A (RA-1 in ZR-16) PUD Zone – C-3-B (MU-8 in ZR-16)
Comprehensive Plan Maps	Future Land Use Map – Mixed medium density residential / commercial Policy Map – Neighborhood Enhancement Area / New Neighborhood Center
Project Summary:	This approved Consolidated PUD is for a mixed-use development consisting of two buildings with a combined FAR of 5.03. A 9-story building would primarily be a residential building with 205-215 affordable and market rate units, as well as ground floor retail and office uses. An 8-story building would primarily be office with ground floor retail. The site is located across Alabama Avenue SE from the Congress Heights Metro Station.
Order Date:	Effective June 5, 2015
Previous Extensions:	There have been no previous extensions; however the original order included an additional year (from two to three years) to obtain a building permit.
Order Expiration Date:	June 5, 2019
Request	The applicant is requesting a two-year time extension to June 5, 2021.

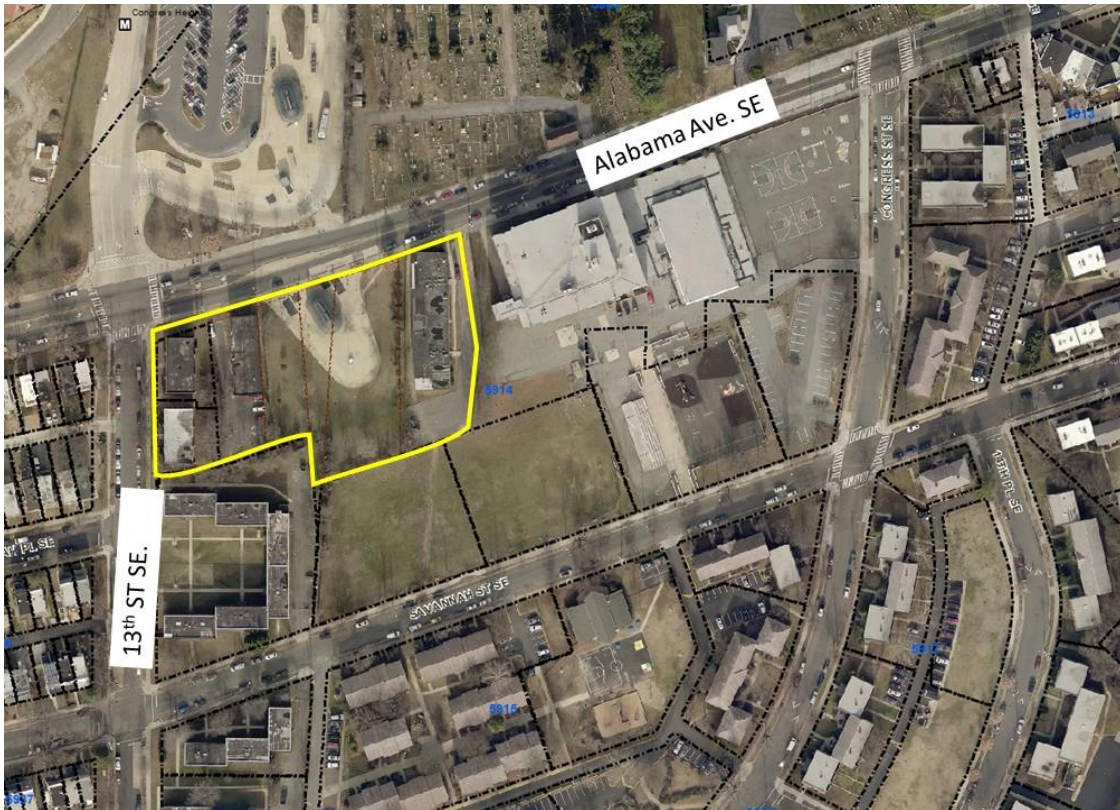


Figure 1. Site

## EVALUATION OF THE EXTENSION REQUEST

### Subtitle Z, § 705.2

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 31, 2019 and has been in the public record since filing.

*(b) There is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the application that would undermine the Commission’s justification for approving the original application;*

There have been no substantial changes to the Comprehensive Plan since the project’s approval that would affect the material facts upon which the project was approved. However, there have been changes to the Inclusionary Zoning regulations regarding the Medium Family Income (MFI) requirements and there has been a report on the status of affordable housing and the need for larger units in the District that would be analyzed as material fact as part of the evaluation of the application if the PUD were submitted today.

Inclusionary Zoning and Medium Family Income (MFI)

There have been changes to the Inclusionary Zoning (IZ) regulations that limit the Medium Family Income eligible for rental IZ units to 60% instead of the higher 80% MFI used in this PUD.

Need for Large Family-sized Units

The Coalition for Nonprofit Housing and Economic Development worked with the Urban Land Institute to prepare “*An Assessment of the Need for Large Units in the District of Columbia*” for the Deputy Mayor for Planning and Economic Development (DMPED). This study investigates the need for large family rental housing units—those with three or more bedrooms—in the District of Columbia. Residents raised concerns that the housing needs of families, particularly families with low incomes, are not being well-addressed. In response, the Council of the District of Columbia authorized funding for the Office of the DMPED to assess the need for large family units.

Of the 206 proposed dwelling units in this PUD only 30 are two-bedrooms (14.5%) and the remaining are one-bedrooms or studios. There are none that would be considered family-sized.

Eight percent (8%) of the total residential square footage is to be set-aside as affordable 15,655 sq. ft. Of the 15,655 sq. ft., 10,877 sq. ft. is to be reserved for household earning up to 80% MFI and only 4,778 sq. ft is set aside for household up to 50% MFI. Neither the affordability or the bedroom offering would qualify under current requirements and expectations for a rental building.

(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;*

The applicant outlines its rationale in a Statement of Support at Exhibit 1. One of the original owners of residential buildings within the PUD boundaries was Sanford Capitol which, in 2017, defaulted on loans and the properties were placed in court-ordered receivership. The Applicant took full ownership of the buildings within the PUD site, so that Sanford no longer has any interest in the PUD Project. In June 2018 the Applicant sent a notice to the Tenant Association offering them the right to purchase the residential buildings through TOPA. The Applicant and Tenant Association have not reached a resolution on this notice, so the Applicant is unable to secure construction financing until this issue is resolved. In addition, the tenant’s attorney has filed a *Lis Pendens* action which impacts the title of the residential properties and has prevented the Applicant from being able to obtain title insurance on these properties. Title insurance is needed for them to close on the financing.

*(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*

Not applicable

*(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.*

There are two pending DC Superior Court cases regarding the residential parcels on the site. As noted in the applicant's filing, one of the cases includes the placement of a court appointed Receiver to remediate mold and to resolve any housing code violations in the residential buildings; the Applicant has filed an injunction asking that the Receiver be removed. As the Applicant cannot assert any management or control of the site, the Applicant is unable to start construction until the Receiver completes their work or is removed. The Applicant estimates that the Receiver will complete their work within six months.

#### Zoning Commission Discretion

Under the zoning regulations, to qualify for an extension, an applicant must demonstrate that they meet one or more specific criteria. (11-Z DCMR § 705.2(c)). Meeting one or more of the criteria does not, however, entitle an applicant to an extension.

Once the predicates for requesting an extension set forth in 11-Z DCMR § 705.2(c) are met, the granting or denial of an extension is at the Commission's "sole discretion." (11-Z DCMR § 705.3). Moreover, although it is not unusual for the Commission to grant an extension, an extension is an exception to the general rule that plan approvals expires within specified periods (11-Z DCMR § 702). The time limit that the zoning regulations place on a plan approval reflects that the circumstances surrounding the approval of an application may change and that there may be a public interest in taking a fresh look at how a property is to be developed. This public policy is reflected in the rule that the "[p]revious approval of an application shall not be binding precedent on a new application." (11-Z DCMR § 702.5).

Should the Commission decide to grant an extension, OP recommends the extension be limited to one (1) year since an additional year was already included in the original approval.