

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 13-08A**  
**Z.C. Case No. 13-08A**  
**City Partners 5914, LLC**  
**(Two-Year Time Extension for PUD @ Square 5914)**  
**October 21, 2019**

Pursuant to notice, at its public meeting of October 21, 2019, the Zoning Commission for the District of Columbia (the “Commission”) considered the request of City Partners 5914, LLC (the “Applicant”) for a two-year time extension of the June 5, 2019 deadline (the “Application”) to begin construction of the planned unit development (“PUD”) established by Z.C. Order No. 13-08 (the “Original Order”), for Parcels 229/161, 229/160, 229/153, 229/151, and 229/103 and Lots 6 and 7 in Square 5914, (collectively, the “Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [the “Zoning Regulations”]) to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**Background**

1. By the Original Order, effective on June 5, 2015 (the “Effective Date”), the Commission granted the Applicant consolidated PUD approval and a related Zoning Map amendment for the Property in order to construct a mixed-use project including residential, retail, and office uses (the “Approved PUD”).
2. The Original Order required the Applicant to file for building permits for the first building within three years of the Effective Date and to begin construction of the first building within four years of the Effective Date. (Original Order, Condition No. 5.)
3. The Original Order became effective on June 5, 2015. In order for the PUD to remain valid, an application for a building permit for the construction of one of the buildings in the Approved PUD was required to be filed prior to June 5, 2018, and construction must have begun by June 5, 2019. On June 1, 2018, a Foundation-to-Grade Building permit application was filed with the Department of Consumer and Regulatory Affairs. (FD #1800081.)

**Parties**

4. The parties to the Original Order were:

- a. The Applicant;
- b. Advisory Neighborhood Commission (“ANC”) 8E, the “affected” ANC pursuant to Subtitle Z § 101.8; and
- c. The Alabama Avenue/13<sup>th</sup> Street Tenants Association (the “Tenant Association”).

(Original Order, Findings of Fact [“FF”] 1, 5.)

### **The Application**

5. On May 31, 2019, prior to the expiration of Z.C. Order No. 13-08, the Applicant filed an Application for a two-year extension of the June 5, 2019 deadline to begin construction of the Approved PUD.
6. The Application included a Certificate of Service attesting to service on all parties to the Original Order, including ANC 8E and the Alabama Avenue/13<sup>th</sup> Street Tenants Association, on May 31, 2019. (Exhibit [“Ex.”] 1.) Neither party submitted responses to the record.
7. The Application asserted that no substantial change had occurred to any of the material facts on which the Commission relied in approving the PUD and related map amendment for the Property in the Original Order. No modifications have been made to the approved PUD Project or to the Zoning Regulations, nor have modifications been made to the Comprehensive Plan, that impact the Commission’s approval of the PUD Project. (Ex. 1.)
8. The Application asserted that there is good cause to justify the time extension because of pending litigation and other conditions and circumstances beyond the Applicant’s reasonable control that make the Applicant unable to comply with the time limits of the Original Order.
9. The Application noted that one of the members of Square 5914, LLC, the applicant in Z.C. Case No. 13-08, was an entity related to Sanford Capital, which owned interests in the residential buildings that were part of the land included in the Approved PUD. By 2017, Sanford Capital-related entities had defaulted on various loans and the residential properties on the site were placed in court-ordered receivership. The Applicant subsequently took ownership of these residential properties in December 2017 and removed the Sanford Capital-related entities from the project entirely. Sanford Capital has no interest, ownership, or potential future ownership interest in the Approved PUD. The Applicant also stressed that it and the principals of CityPartners 5914, LLC had no control, ownership, or management responsibilities of those residential buildings prior to December 2017 and did not create the housing conditions that led to the appointment of the receiver. (Ex. 1.)
10. The Application stated that in taking possession of the residential parcels, the Applicant inherited the litigation that the Sanford Capital-related entities were involved in related to

those properties. At the time the Application was filed, there were two cases pending before the DC Superior Court regarding those properties. (Ex. 1.)

11. The Applicant stated that since taking ownership of the residential properties, it had offered the Tenant Association the right to purchase the buildings through the Tenant Opportunity to Purchase Act (“TOPA”), and it made a settlement offer to the Tenant Association. At the time of the filing of the Application, all of the former tenants in the buildings that were formerly owned by Sanford Capital had been relocated to other locations in close proximity to the Approved PUD, with all relocation costs and expenses paid by the Applicant. The Applicant has also made additional proffers to the 10 former tenant member households who make up the Tenant Association beyond the proffers that were approved in the Original Order. (Ex. 1 at 4, 1C.)
12. The Applicant asserted that, while it continues to pursue negotiations with the Tenant Association in order to resolve the two pending Superior Court cases as expeditiously as possible, the existence of these cases renders it unable to start construction of the Approved PUD by June 5, 2019, for the following reasons:
  - a. It is not possible to secure construction financing without a resolution to the TOPA notice that the Applicant provided to the tenants in June of 2018, and a reconciliation as to whether the tenants will negotiate to purchase the residential buildings to redevelop the sites themselves. The Application noted that if the PUD expires, the development opportunity is not only lost for the Applicant, but is also lost for the tenants, if they decide they want to develop the site;
  - b. As part of the outstanding litigation, the tenants’ attorneys have filed a *lis pendens* action which has clouded the title of the residential properties preventing the Applicant from obtaining title insurance, and, as a result, prevented the Applicant from closing on the financing for the project; and
  - c. One of the pending Superior Court cases is related to the placement of a court appointed receiver to remediate mold and resolve any housing code violations in the residential buildings. While the receiver has had full and unilateral control of the residential properties since November 2017, the buildings have continued to receive housing code violations and fines. The Applicant has filed an injunction with the Court asking that the receiver be removed for negligence and malfeasance. The Applicant stated that it cannot start construction as it is prohibited under the Tenant Receivership Act (“TRA”) to assert any management or control on site until the receiver completes its work or is removed to allow for the redevelopment of the site. The Applicant has funded the receiver’s account for operations and for the completion of its plan. The Applicant estimated that the receiver will complete its work within six months of the date this Application was filed. (Ex. 1.)

## Responses to the Application

### Office of Planning (“OP”)

13. OP submitted a report that did not take a position on whether or not the Commission should grant the Application (the “OP Report”). (Ex. 11.)
14. The OP Report provided an analysis of the Application against the relevant standards of Subtitle Z § 705.2, noting that the approval of a time extension is within the Commission’s “sole discretion.” The OP Report also found that there had been no substantial changes to the Comprehensive Plan since the Commission approved the Original Order. The OP Report did note that there had been changes to the Inclusionary Zoning Regulations involving the median family income levels, as well as a report regarding the need for more family-sized units in the District. Finally, the OP Report recommended that, if the Commission did grant the extension, it be limited to one year.

### ANC 8E

15. ANC 8E did not submit a written report to the case record.

### Alabama Avenue/13<sup>th</sup> Street Tenants Association

16. The Alabama Avenue/13<sup>th</sup> Street Tenants Association did not submit any response to the Application.

### Office of the Attorney General (“OAG”)

17. OAG, which was not a party to the original case, submitted a request for a waiver dated July 2, 2019, requesting that the Commission accept into the record a letter in opposition to the Applicant’s time extension request.<sup>1</sup> OAG’s opposition to the time extension request was based on three arguments:
  - a. That the Applicant had full knowledge of Sanford Capital’s actions;
  - b. That the Applicant violated the tenants’ TOPA rights; and
  - c. That granting the time extension would not be in the public interest.

OAG noted that “[i]n the event the Commission does not deny the current PUD extension, OAG asks that the extension be limited to one year instead of the two years requested.” The Commission granted the waiver and accepted the letter into the record. (Ex. 5.)

18. On July 19, 2019, the Applicant responded to OAG’s opposition arguing that the information provided in OAG’s opposition was not relevant to the Commission’s determination of whether the Applicant has satisfied the standards for approval of a PUD time extension request. Nevertheless, the Applicant provided evidence rebutting OAG’s

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<sup>1</sup> OAG screened off the Land Use Section Attorney who advised the Commission in this case and authorized her to exercise independent professional judgment in coordination with the General Counsel of the Office of Zoning in order to prevent any conflicts of interest.

arguments regarding the Applicant's relationship with Sanford Capital. In addition, the Applicant argued that approving the time extension request was in fact in the public interest because if the PUD expired, the development opportunity is lost for the Applicant and all of the benefits and offers to the tenants are lost as well. The Applicant also provided evidence of the support the project has in the surrounding community. (Ex. 9, 9A-9D.)

19. On July 26, 2019 and July 29, 2019, OAG submitted its response to the Applicant's July 19, 2019 submission. OAG argued that the Applicant failed to satisfy the standards of Subtitle Z §705.2 in that it failed to demonstrate "good cause" for approval of the Application because material facts on which the original approval was based had changed and the reasons for the requested extension, the presence of litigation, were not beyond the Applicant's reasonable control. (Ex. 15, 15A-15B.)
20. On July 29, 2019, the Applicant submitted a letter into the record, which requested that the Commission defer action on the Application until October 21, 2019, to allow more time for the relevant parties to come to an agreement. The Commission granted this request. (Ex. 14.)
21. The Applicant responded to OAG's July 26, 2019 submission with a response on August 5, 2019, in which the Applicant continued to assert that the Application met the requirements for approval of a time extension under Subtitle Z § 705.2. (Ex. 16.)
22. On October 21, 2019, OAG requested another waiver from the Commission to allow an additional submission. In this submission, OAG requested that the Commission "continue the hearing set for October 21, 2019 in this matter for sixty (60) to ninety (90) days" to allow the Tenants Association additional time to negotiate with an alternative developer for the site. The Commission approved the waiver and accepted OAG's letter into the record, but the Commission did not grant the requested continuance. (Ex. 17, 17A.)

#### Additional Non-Party Submissions

23. The Commission approved three requests from non-parties to submit comments in support of the Application to the record:
  - a. An e-mail (with supporting materials) from Mr. David Conn, a Ward 8 resident, that posited that denying the Application would not be in the best interest of the surrounding community and would result in the continued blighted condition of the site; (Ex. 8, 8A-8A4.)
  - b. A letter in support of the Application from Ms. Stacy Smith, Mayoral appointee for the Workforce Investment Council and Chair of its Youth Committee; and (Ex. 12, 12A.)
  - c. A letter in support of the Application from Mr. Terrance Lynch. (Ex. 13, 13A.)

## CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the time period of an order approving a PUD 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. The Commission concludes that the Applicant timely filed the Application on May 31, 2019, prior to the June 5, 2019 deadline to begin construction of the Approved PUD that the time extension seeks to extend.
3. 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.
4. The Commission concludes that the Applicant has satisfied Subtitle Z § 705.2(a) by demonstrating that it had served all parties to the Original Order – ANC 8E and the Alabama Avenue/13<sup>th</sup> Street Tenants Association – and that all were given 30 days to respond from the May 31, 2019 date of service.
5. Subtitle Z § 705.2(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission’s justification for approving the PUD.
6. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) based on the Application and the OP Report, which stated that no substantial change had occurred to the material facts upon which the Commission had relied in issuing the Original Order.
7. 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 PUD 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.*
8. The Commission concludes that the Application met the standard of Subtitle Z § 705.2(c)(3) because the Applicant is subject to ongoing litigation concerning the Approved PUD that has impeded the Applicant’s ability to begin construction by the

deadline specified in the Original Order. The Commission concludes that the litigation relates to the actions of a separate entity – Sanford Capital - and therefore its existence is beyond the Applicant’s reasonable control. Notwithstanding the foregoing, the Commission finds that the Applicant has made diligent efforts to resolve the litigation as expeditiously as possible.

9. While the Commission considered the various filings of OAG, it ultimately concludes that OAG is not a party to the case and the arguments raised in the filings are not germane to the Commission’s analysis. The Commission notes that pursuant to Subtitle Z § 705.3, it has the “sole discretion” to grant time extensions, provided that the Applicant has demonstrated “good cause.” The Commission also notes that the Zoning Regulations specifically include the presence of pending litigation as a specific factor that it may consider as good cause. (Subtitle Z § 705.2(c)(3); *see also, Hotel Tabard Inn v. District of Columbia Zoning Commission*, 747 A.2d 1168, 1178-79 (2000).) Therefore, and as explained further above, the Commission concludes that the Applicant has demonstrated good cause for the approval of the Application. The Commission also does not find persuasive OAG’s argument that the material facts underlying the Commission’s original approval have changed.
10. The Commission does concur with OP’s recommendation, as also supported by OAG, that the time extension be limited to one year.

**“Great Weight” to the Recommendations of OP**

11. The Commission is required to give “great weight” to the recommendation 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 § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
12. The Commission considered OP’s analysis and ultimately concurs with the OP Report’s recommendation that the time extension be limited to one year.

**“Great Weight” to the Written Report of the ANC**

13. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC 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 Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) 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 Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

14. The ANC did not submit a written report to the record, despite being given proper notice of the Application, and as such, there is nothing to which the Commission can give great weight.


**DECISION**

In consideration of the case record and 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 Time Extension, to extend the deadline to begin construction of the PUD as granted by Z.C. Order No. 13-08 by one year to **June 5, 2020**.

**VOTE (October 21, 2019): 4-0-1** (Anthony J. Hood, Peter A. Shapiro, Robert E. Miller, and Michael G. Turnbull (by absentee ballot) to **APPROVE**; Peter G. May not present, voting)

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order No. 13-08A shall become final and effective upon publication in the *D.C. Register*; that is, on April 17, 2020.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
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**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (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.