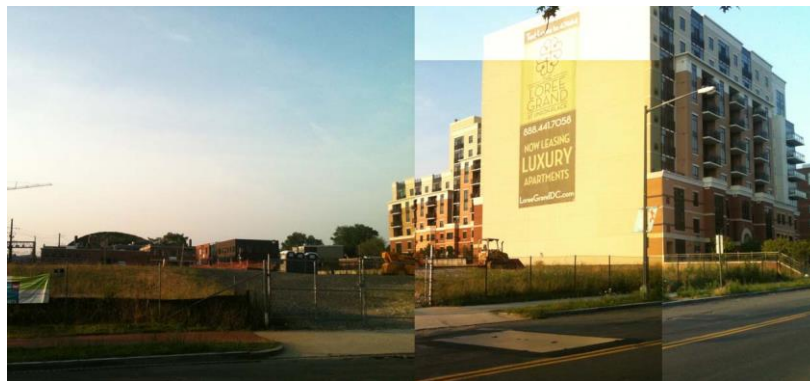


**MEMORANDUM**

**TO:** District of Columbia Zoning Commission  
**FROM:** Jennifer Steingasser, Deputy Director Development Review & Historic Preservation  
**DATE:** September 5, 2014  
**SUBJECT:** PUD Case 05-36 J – Third Extension Request for Phase II

**RECOMMENDATION:** The Office of Planning (OP) recommends **approval** of the requested one-year extension.

<b>Applicant:</b>	Toll DC II LP
<b>Street Address:</b>	200 K Street, N.E.
<b>Square/Lot</b>	Square 749, Lot 826, 827
<b>Ward / ANC</b>	Ward 6, ANC 6C
<b>Project Summary:</b>	Applicant requests extension of Order for PUD Phases II-A and II-B, which would add 500 dwelling units (including 50 affordable units) and 14,000 SF of retail space to the 212 units (including 28 affordable units) finished in Phase I.
<b>Order Date:</b>	Effective May 27, 2011
<b>Previous Extension:</b>	ZC 05-36A - effective November 14, 2008 ZC 05-36D – effective May 27, 2011 ZC 05-36F – effective July 30, 2012
<b>Order Expiration Date:</b>	November 14, 2014 – deadline for filing building permit November 14, 2015 – deadline for starting construction



**Figure 1. PUD with Phase I constructed at right and undeveloped Phase II site to the left**

**EVALUATION OF THE EXTENSION REQUEST**

§ 2408.10 allows for the extension of a PUD for “good cause” shown upon the filing of a written request by the applicant before the expiration of the approval; provided 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 August 11, 2014 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 planned unit development that would undermine the commission's justification for approving the original PUD.**

There has been no substantial change to the Zoning Regulations, the Comprehensive Plan or development near the PUD site that would affect the approved Phase II development. Completed and anticipated nearby development is consistent with trends projected at the time the PUD was approved.

**(c) The applicant demonstrates with substantial evidence that there is good cause for such an extension, as provided in § 2408.11.**

§ 2408.11 sets out the conditions of good cause as:

- (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, 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.*

The applicant notes the following as good causes consistent with § 2408.11 (b and c):

- It completed its acquisition of the property in 2013, one year from the date of the current extension order.
- The applicant's subsequent examination of the approved plans resulted in the applicant's filing for a modification of the Phase II plans in April 2014. The requested modifications would modify the location of courtyard access, courtyard layout and façade treatments.
- The public hearing on the above application will be held October 30, 2014, two weeks after the scheduled extension hearing, effectively making it impossible for the applicant to complete working drawings for Phase II and file for a building permit by the required November 14, 2014 date.

§ 2408.10 further requires that for an extension to be granted the Zoning Commission must determine:

*(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...*

There has not been a substantial change in the material facts at this time. Further, while the Commission has set down a request for modifications to Phase II in Z.C. Case 05-36H, the requested extension would apply to the PUD as designed when Order 05-36F was approved. The hearing for the modification request is scheduled to follow a decision on the present extension request.

§ 2408.12 states a public hearing on an extension request is necessary only if the Commission determines:

*...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.*

OP is aware of no factual conflicts generated by the parties involved in Phase II of the approved PUD. The applicant has made the ANC aware of the requested extension, but no ANC vote has been held.