

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17521-A of 601-645 H Street Ventures LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 772 and a variance from the residential recreation space requirements under section 773, and pursuant to 11 DCMR §§ 3104.1 and 1325.1, a special exception from the lot occupancy requirements of § 1324.4, a special exception from § 1303.2 to permit a driveway on H Street, a special exception pursuant to § 2514.2 for a thirty-five foot extension of a less restrictive district into a more restrictive district, and a special exception under § 1320.4 to allow an addition that increases the gross floor area of an existing building by more than fifty percent on a lot that has 6,000 square feet or more of land area, in the H Street Northeast Neighborhood Commercial Overlay District in the HS/C-2-A and HS/C-2-C Districts at premises 601-645 H Street, N.E. (Square 859, Lot 177).

Hearing Dates: November 21, 2006 and December 5, 2006

Decision Dates: December 5, 2006 and February 6, 2007

Final Date of Order: August 21, 2007

Decision on Motion to Extend Order: April 7, 2009

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17521

The Underlying BZA Order

On December 5, 2006, the Board approved the Applicant's request for variances (SS 772 and 773) and a special exception to extend the zone boundary line (§ 2514.2) and a special exception from lot occupancy (§1324.4). On February 6, 2007, the Board approved the Applicant's request for a special exception for the relocated curb cut (§ 1303.2) and a special exception to permit an addition of more than 50% on a lot with more than 6,000 square feet (§ 1320.4). The Board issued an order to that effect on August 21, 2007.

Under the Order, and pursuant to § 3130.1 of the Zoning Regulations, the Order was valid for two years from the time it was issued – until August 21, 2009.

Section 3130.1 states:

No order [of the Board] authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment

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Facility(EEF), unless within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit.

(11 DCMR § 3130.1)

Motion to Extend

On March 19, 2009, the Board received a letter from the Applicant, which noted that:

"the District of Columbia and the United States are in the most significant economic downturn since the Great Depression of the 1930's. Despite the applicant's efforts, there is no financing for a residential project of this type at this time. The applicant has, over the past two years, sought financing from any number of sources and it has not been able to obtain commitments to allow the project to proceed.

Accordingly, the Applicant requested that, pursuant to § 3100.5 of the Regulations, the Board waive the provisions of § 3130.1, which limits the validity of the underlying Order to two years from the date of its issuance, and extend the validity of its prior order for an additional two years, thereby allowing the Applicant additional time to apply for a building permit.

Criteria for Evaluating Motion to Extend

Section 3100.5 of the Regulations states in full:

Except for §§ 3100 through 3105, 3121.5 and 3125.4, the Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

(11 DCMR § 3100.5)

The Board finds that the Applicant has met the criteria set forth in this provision. The Applicant's inability to secure financing and the poor economic conditions in the District constitutes the "good cause" required under § 3100.5. The Board also finds that a waiver in this case would not prejudice the rights of any party and is not otherwise prohibited by law.

In requesting this extension of the Order, the applicant's plans for development of the site would be unchanged from those approved by the Board in its Order dated August 21, 2007 (Exhibit Nos. 96 and 105 in the record). There have been no changes to the zone district classification applicable to the property or to the Comprehensive Plan affecting this site since the issuance of the Board's Order. The only change to the requirements of the Regulations from which relief was sought is that the provisions requiring residential recreation space have been deleted and relief from §773 is no longer required. Neither the ANC nor any party to the application objected to an extension of the Order. The Board concludes that the extension of that relief is appropriate under the current circumstances.

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Accordingly, the Board hereby waives the limitation in § 3130.1 of the Regulations and extends the validity of the underlying Order for a period not to exceed two years from the current expiration date, thereby establishing a new expiration date of August 21, 2011.

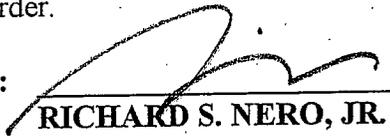
Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this request for extension of time be **GRANTED** until August 21, 2011.

VOTE: 3-0-2 (Marc D. Loud, Shane L. Dettman and Michael G. Turnbull to approve; Mary Oates Walker and the third (vacant) mayoral appointee not participating, not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

ATTESTED BY:


RICHARD S. NERO, JR.
Acting Director, Office of Zoning

FINAL DATE OF ORDER: APR 08 2009

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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

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PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT
BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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As Director of the Office of Zoning, I hereby certify and attest that on April 8, 2009, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:


RICHARD S. NERO, JR.
Acting Director, Office of Zoning