

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Order No. 17521-B of Application of 601-645 H Street Ventures LLC, Motion for a Two-Year Extension of BZA Order No. 17521<sup>1</sup>, pursuant to 11 DCMR § 3130.** The original application was pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 772, 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 35-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 50% on a lot that has 6,000 square feet or more of land area, in the H Street Northeast Neighborhood (“HS”) Commercial Overlay 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 (Orig. Application):** November 21, 2006 and December 5, 2006

**DECISION DATES (Orig. Application):** December 5, 2006 and February 6, 2007

**FINAL DATE OF ORDER (Order No. 17521):** August 21, 2007

**DECISION DATE 2009 MOTION (Order No. 17521-A):** April 7, 2009

**DECISION DATE 2011 MOTION:** May 17, 2011

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

The Underlying BZA Order

On December 5, 2006, the Board of Zoning Adjustment (“Board” or “BZA”) approved the application of 601-645 H Street Ventures LLC (“Applicant”) for a variance from the lot occupancy requirements under § 772, for a special exception for a thirty-five foot extension of a less restrictive district into a more restrictive district as permitted by § 2514.2, and for a special

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<sup>1</sup> The Applicant actually requested an extension of Order No. 17521-A. That order did no more than extend the validity of Order No. 17521 until August 21, 2011. The Applicant’s request indicates that it now needs an additional two years to file for a building permit under Order No. 17521, and so it is that order that must be extended once more. The caption has been revised to reflect the relief needed and granted. The caption was also revised for the reasons explained in footnote number 2.

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exception from the 70% lot occupancy requirement of § 1324.4.<sup>2</sup> On February 6, 2007, the Board further approved the Applicant's request for a special exception to permit a driveway on H Street, which because it is a designated roadway was disallowed by § 1303.2, and to permit the enlargement of the gross floor area of an existing building by 50% or more on a lot with more than 6,000 square feet for which special exception review is required by § 1320.4. The Board's decision to grant the relief was memorialized through Order No. 17521 ("the Order"), which was filed in the record and served on the parties on August 21, 2007, and therefore became "final" on that date, pursuant to 11 DCMR § 3125.5.

Under the Order, and pursuant to § 3130.1 of the Zoning Regulations, the Order was valid for two years from the time it became final – until August 21, 2009 during which time the approved plans had to be filed for the purposes of obtaining a building permit.

The First Request to Extend

On March 19, 2009, the Applicant filed a motion requesting a two-year extension of Order No. 17521. (Exhibit 116.) Because the Zoning Regulations did not, at that time, contain a provision expressly authorizing the BZA to extend the validity of an order past the two-year limit set forth in § 3130.1, the Applicant requested the Board to waive that provision pursuant to 11 DCMR § 3100.5. The Board granted that motion on April 7, 2009 and issued Order No. 17521-A on April 8, 2009, thereby extending the validity of Order No. 17521 for two years, to August 21, 2011.

After the issuance of Order No. 17521-A, the Zoning Commission ("Commission") adopted amendments to § 3130 to specifically authorize the Board to extend the time limits of § 3130.1. *Z.C. Order No. 09-01*, 56 DCR 4388 (June 5, 2009). Among other things, the new provisions allowed for only one extension of an order (§ 3130.6).

Instant Motion to Extend

On March 29, 2011, the Board received a letter, dated March 29, 2011, from the Applicant, which requested, pursuant to 11 DCMR § 3130.6, a two-year extension in the validity of Order No. 17521-A (Exhibit 119.). As noted in footnote number 1, the Board considers this request to be one to further extend the validity of Order No. 17521.

The Applicant is requesting a second two-year extension because, as a result of the current economic climate and uncertainty in market conditions, the Applicant has been unable to secure project financing for the project to move forward at this time. The Applicant provided a signed and notarized affidavit from F. Davis Camalier, President of F Davis Camalier Companies, Inc., which is the managing member of the project's owner, together with a copy of the Applicant's

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<sup>2</sup> The Board also had granted variance relief from the recreation space requirements then contained in § 773. On April 6, 2007, the Zoning Commission repealed that provision. The caption has been revised to remove the reference to this no longer needed relief.

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marketing proposal package that it has shared with prospective lenders. In the affidavit Mr. Camalier indicated that the Applicant has diligently sought financing over the past two years from over 25 institutional lenders and investors to refinance, co-invest, and/or provide development financing for the project. To date, the lenders and capital sources thus contacted have not been willing to refinance, invest or fund major land development proposals, as has been the case through the last few years in other projects. However, Mr. Camalier affirmed that the Applicant intends to continue to work with many of groups mentioned along with others to monitor the financial markets so as to secure the necessary financing for the project. While the latest reports suggest that the regional economy has begun to stabilize, the Applicant indicated that it needed the two-year extension being requested herein to provide sufficient time for the economy to further recover and for the Applicant to locate adequate financing for the project. (Exhibit 119, Tab B.)

The Office of Planning (“OP”), by memorandum dated May 10, 2011, recommended approval of the requested extension. (Exhibit 124.) The project is within the boundaries of Advisory Neighborhood Commission (“ANC”) 6C, the affected ANC. ANC 6C filed a report, dated May 3, 2011, indicating that at a duly noticed, special public meeting of the ANC on May 2, 2011, at which a quorum was present, the ANC voted 5:2:0 to support the Applicant's request for a two-year extension. The ANC noted that it had voted at a duly noticed, prior regularly scheduled monthly meeting on April 13, 2011, to hold the special meeting. (Exhibit 123.)

A letter in support of the request for a two-year extension also was submitted for the record by one of the other parties to this case, H Street Main Street. (Exhibit 122.) ANC 6A, the Stanton Park Neighborhood Association, and the H Street, N.E. Neighborhood Association, also parties in the original application, did not file submissions.

Procedural Issue

As a preliminary matter, the Board considered whether the Applicant was barred from making its request due to the language in § 3130.6 which expressly allows the Board to grant only one extension. The Board finds that the prior extension is not counted towards this limit. As explained above, the new regulation was not in effect as of the final date of the order granting the first request for an extension. Section 6(A) of the District of Columbia Administrative Procedure Act, D.C. Official Code § 2-502 (6)(A), defines a rule to mean the “whole or any part of any Mayor's or agency's statement of general or particular applicability *and future effect*” (emphasis added). Therefore, the limit of one extension stated in the new rule was prospective only, so that the prior extension does not count towards this limit.

The merits

Subsection 3130.6 of the Board's Rules of Practice and Procedure, Chapter 31 of Title 11 DCMR, states in full:

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- 3130.6 The Board may grant one extension of the time periods in §§ 3130.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; provided, that the Board 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;
  - (b) There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application; and
  - (c) The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria:
    - (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;
    - (2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays 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.

(11 DCMR § 3130.6.)

The Board finds that the Applicant has met the procedural and substantive requirements set forth in § 3130.6. The motion for a time extension was served on all the parties to the application and the parties were provided at least 30 days in which to respond under § 3130.6(a). Mr. Camalier's affidavit offered substantial evidence of the Applicant's inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control, thereby demonstrating "good cause" as required under § 3130.6(c)(1).

The Applicant also satisfied § 3130.6(b)'s requirement that there be no substantial change in any of the material facts upon which the Board based its original approval. In requesting this extension of the Order, the Applicant's did not also request a modification to the plans approved by the Board in Order No. 17521. 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.

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Finally, ANC 6A and H Street Main Street supported the extension and the remaining parties did not file submissions in response to the extension request.

It is therefore **ORDERED** that this request for extension of the validity of Order No. 17521 be **GRANTED**, and that Order No. 17521 shall be valid for a period that will end on August 21, 2013 unless, within such period, plans are filed for the purpose of securing a building permit.

**VOTE: 4-0-1** (Nicole C. Sorg, Peter G. May, Lloyd J. Jordan, and Jeffrey L. Hinkle to Grant; and Meridith H. Moldenhauer not participating, not voting.)

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

A majority of the Board members approved the issuance of this order.

ATTESTED BY: \_\_\_\_\_

  
**JAMISON L. WEINBAUM**  
Director, Office of Zoning

**FINAL DATE OF ORDER:**         JUN 03 2011        

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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
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As Director of the Office of Zoning, I hereby certify and attest that on June 3, 2011, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, or delivered by electronic mail in the case of those ANCs and SMDs that have opted to receive notices thusly, 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:**

  
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**Director, Office of Zoning**