

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17540-A of Capitol Hill Day School, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements of § 404, a variance from the rear yard requirements of § 403, and a variance from the floor area ratio requirements of § 1203.3 of the Capitol Interest Overlay District, and pursuant to 11 DCMR §3104.1, for a special exception pursuant to § 1202.1, to allow the construction of an addition to a private school, and pursuant to § 206, to reconfigure the layout of an existing parking lot, at premise 210 South Carolina Avenue, S.E., in the CAP/R-4 District (Square 765, Lot 803).

Application No. 17541-A of Capitol Hill Day School, pursuant to 11 DCMR § 3104.1, for a special exception pursuant to §§ 206 and 1202.1 to allow the continued operation of a private school for thirty (30) students in pre-kindergarten through eighth grade and five (5) faculty and staff members in the basement through second floor at premise 214 South Carolina Avenue, S.E., in the CAP/R-4 District (Square 765, Lot 802).

Hearing Dates for Both Applications: November 28, 2006, January 16, 2007

Decision Date for Both Applications: February 6, 2007

Final Date of Order: June 11, 2007

Decision on Motion to Extend Orders: April 7, 2009

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17540 and 17541

The Underlying BZA Order

On February 6, 2007, the Board of Zoning Adjustment (the Board or BZA) approved the Applicant's request for variance and special exception relief for two properties that were the subject(s) of what were originally filed by the Applicant as two applications but were addressed by the Board in a single order addressing both properties.¹ Thus, the Board, with conditions, approved a variance from the lot occupancy requirements of § 404, a variance from the rear yard

¹ The BZA determined that it would be appropriate to hear and decide the two applications (17540 and 17541) together, as the two adjacent properties involved in these cases were both part of a single use: a private school. The Board issued one Order for both of these applications. Moreover, in that Order, the Board subsumed the separate special exception that had previously existed for 214 South Carolina Avenue, S.E. (the property that was the subject of 17541), into the untermed special exception granted to the Applicant in 1979 by Order No. 12860, for the property that was the subject of Application 17540 (210 South Carolina Avenue), treating them both as part of the private school use of the Applicant.

requirements of § 403, and a variance from the floor area ratio requirements of § 1203.3 of the Capitol Interest Overlay District, and pursuant to 11 DCMR §3104.1, for a special exception pursuant to § 1202.1, to allow the construction of an addition to a private school, and pursuant to § 206, to reconfigure the layout of an existing parking lot, at premise 210 South Carolina Avenue, S.E., in the CAP/R-4 District (Square 765, Lot 803). Also, in the same order, the Board approved the Applicant's request for a special exception pursuant to §§ 206 and 1202.1 to allow the continued operation of a private school for thirty (30) students in pre-kindergarten through eighth grade and five (5) faculty and staff members in the basement through second floor at premise 214 South Carolina Avenue, S.E., in the CAP/R-4 District (Square 765, Lot 802). The Board authorized a single order for both of these applications, with conditions, which was issued on June 11, 2007 (BZA Order 17540 and 17541).

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 June 11, 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 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 20, 2009, the Board received a letter from the Applicant, which requested a two year extension in the authority granted in the underlying BZA Order for two reasons: the Applicant's (1) inability to obtain financing due to economic and market conditions beyond the Applicant's control and (2) inability to secure all required government agency approvals by the expiration of the BZA Order because of delays beyond the Applicant's control. The letter noted that:

"...The municipal bond market, including the market for tax-exempt revenue bonds, has been severely and adversely impaired by the current credit crisis and overall economic downturn...Adding to the credit crisis has been the collapse of the swap market and the failure of major banks that provide letters of credit to private schools to improve their credit ratings to investment grade, an essential product for the financing package of Capitol Hill Day School...Specifically, many banks have pulled back from the market or are charging much higher rates for letters of credit...The investment advisors to the Capitol Hill Day School expect it may be a year or so before the credit market begins to properly function again and produce rates in the 5% range. Such rates are needed to finance the construction of the new addition to the School's Property."

With respect to the second reason for request, the Applicant stated:

“In July, 2008, the School contracted with Northern Virginia Drilling and Bowman Geothermal to drill a test well to determine if the aquifer could supply an adequate amount of water to heat and cool the addition. The results were positive. The District of Columbia Department of the Environment (DOE), however, refused to issue a drilling permit for the well because its intended purpose was to operate an open loop geothermal system...Unfortunately, DOE has not issued regulations for open loop geothermal systems and the agency does not have guidelines to evaluate the School’s request...As a consequence of the above, the Environmental Impact Screening Form (EISF), submitted for review to the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), has not been approved because DOE has not determined whether the School’s open loop geothermal system will be permitted and the School cannot file for a building permit until the EISF is approved...The DOE gave the School and its consultants some hope that a permit could be approved but requested that the School complete a complex set of thermal models to demonstrate that the heat plume from the proposed system would dissipate...This [evaluation] process may be completed by the end of September 2009 but unfortunately the control of the timing of these reviews and approvals is beyond the Schools’ control...”.

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, as conditioned, 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 filing of the motion on March 20, 2009, prior to the expiration date, tolled the effect of the order. (Exhibit No. 121). The Applicant’s inability to secure financing and the poor economic conditions in the District together with the Applicant’s inability to secure all required government agency approvals by the expiration of the BZA Order because of delays beyond the Applicant’s control 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 June 11, 2007 (Exhibit No. 9

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.

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.

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 June 11, 2011.

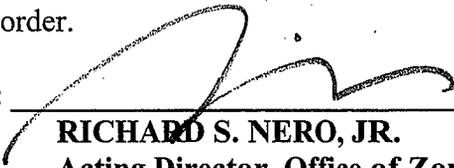
Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this request for extension of time be **GRANTED** until June 11, 2011.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17540-A and 17541-A

As Acting Director of the Office of Zoning, I hereby certify and attest that on April 10, 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:

Jacques B. DePuy, Esq.
Greenstein, DeLorme & Luchs, P.C.
1620 L Street, N.W., Suite 900
Washington, D.C. 20036-5605

Bradley and Catherine Pine
216 South Carolina Avenue, S.E.
Washington, D.C. 20003

Chairperson
Advisory Neighborhood Commission 6B
921 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

Single Member District Commissioner 6B01
Advisory Neighborhood Commission 6B
8 4th Street, S.E.
Washington, D.C. 20003

Tommy Wells, City Councilmember
Ward Six
1350 Pennsylvania Avenue, N.W.
Suite 408
Washington, D.C. 20004

Bennett Rushkoff, Esq.
General Counsel

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

BZA APPLICATION NO. 17540-A and 17541-A
PAGE NO. 2

Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

ATTESTED BY:

A handwritten signature in black ink, appearing to read 'R. Nero, Jr.', is written over a horizontal line. The signature is fluid and cursive.

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