

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17582-A of 656, 666 Pennsylvania Avenue Associates and 327 7th ST SE LLC, pursuant to 11 DCMR § 3103.2, for a variance from the building height requirements under section 770, a variance from the floor area ratio requirements under subsection 1572.3 and a variance from the off-street parking requirements under subsection 2101.1, to construct an office addition to several contiguous buildings in the CHC/C-2-A District at premises 656 Pennsylvania Avenue, S.E., 660 Pennsylvania Avenue, S.E., 325 7th Street, S.E., and 327 7th Street, S.E. (Square 873, Lots 115, 116 and 117).

HEARING DATE (Orig. Application): March 20, 2007 and July 24, 2007
DECISION DATE (Orig. Application): July 24, 2007 (Bench Decision)
FINAL ORDER ISSUANCE DATE (Orig. Application): July 26, 2007
DECISION ON MOTION TO EXTEND ORDER: July 14 and July 28, 2009

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17582

The Underlying BZA Order

On July 24, 2007, the Board of Zoning Adjustment (the Board or BZA) approved the Applicant's request for variance relief from the requirements for building height, floor area ratio, and off-street parking, to construct an office addition to several contiguous buildings in the CHC/C-2-A District. Thus, pursuant to 11 DCMR § 3103.2, the Board approved a variance from the building height requirements under section 770, from the floor area ratio requirements under subsection 1572.3, and from the off-street parking requirements under subsection 2101.1, to construct an office addition to several contiguous buildings, in the CHC/C-2-A District, at premises 656 Pennsylvania Avenue, S.E., 660 Pennsylvania Avenue, S.E., 325 7th Street, S.E., and 327 7th Street, S.E. (Square 873, Lots 115, 116 and 117). The Order was issued July 26, 2007. (BZA Order 17582)

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BZA APPLICATION NO. 17582-A
PAGE NO. 2

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 July 26, 2009.

Section 3130.1¹ 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, except as permitted in § 3130.6.

(11 DCMR § 3130.1)

Motion to Extend

On June 19, 2009, the Board received a letter from the Applicant, which requested, pursuant to 11 DCMR §3130.6,² a two-year extension in the authority granted in the underlying BZA Order, which was due to expire July 26, 2009. (Exhibit 42). A copy of the request for an extension was served on the parties to the application, Advisory Neighborhood Commission 6B (ANC 6B) and the Office of Planning (OP).

The Applicant is requesting a two-year extension in the authority granted in the underlying BZA Order because of the Applicant's inability to obtain financing due to economic and market conditions beyond the Applicant's control. The Applicant has, over the past two years, sought financing from a number of different sources and has been unable to obtain commitments to allow the project to proceed. The extension would allow the Applicant the additional time in which to secure financing.

Additionally, the Applicant cites as a reason for the request for an extension in the authority granted in the underlying BZA Order, the Applicant's inability to secure all the required government agency approvals by the expiration of the BZA Order because of delays beyond the Applicant's control. Due to the complexity of the project, which entails an addition to three existing buildings in an historic district and a re-use of existing core facilities of an existing building at 660 Pennsylvania Avenue, S.E., the Applicant has had difficulties in obtaining utility and government review and approval for the addition that are beyond the Applicant's control.

¹ Section 3130.1 was amended by the addition of the phrase "except as permitted in § 3130.6" by the Zoning Commission in Z.C. Case No. 09-01. The amendment became effective on June 5, 2009.

² Section 3130.6 was adopted by the Zoning Commission in Z.C. Case No. 09-01 and became effective on June 5, 2009.

BZA APPLICATION NO. 17582-A
PAGE NO. 3

Accordingly, the Applicant requested that, pursuant to § 3130.6 of the Regulations, the Board extend the validity of its prior Order, as conditioned, for an additional two years, thereby allowing the Applicant additional time to secure financing and apply for a building permit.

Criteria for Evaluating Motion to Extend

The Zoning Commission adopted 11 DCMR § 3130.6 in Zoning Commission Case No. 09-01. The Section became effective on June 5, 2009.

Section 3130.6 of the Zoning Regulations states in full:

- 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

BZA APPLICATION NO. 17582-A
PAGE NO. 4

- (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 criteria set forth in this provision. The filing of the motion on June 19, 2009, prior to the expiration date, tolled the effect of the order. The request was served on all the parties to the application and those parties were given 30 days in which to respond. The Applicant's inability to secure financing and the poor economic conditions in the District, as well as the difficulties that the Applicant has had in securing required governmental agency approvals, constitute the "good cause" required under § 3130.6(c)(1) and (2).

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 July 24, 2007 (Exhibit No. 40 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, pursuant to § 3130.6 of the Regulations, the Board hereby 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 July 26, 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 July 26, 2011.

VOTE: 3-0-2 (Marc D. Loud, Shane L. Dettman, and Michael G. Turnbull
to approve; two mayoral appointees not participating, nor 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:


RICHARD S. NERO, JR.

Acting Director, Office of Zoning

FINAL DATE OF ORDER: AUG 03 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. 17582-A

As Acting Director of the Office of Zoning, I hereby certify and attest that on August 3, 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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BZA APPLICATION NO. 17582-A
PAGE NO. 2

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Acting Director, Office of Zoning