

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17604-A of NJA Associates, LLC, pursuant to 11 DCMR § 3104.1, for a special exception for a waiver of the rear yard requirements under subsection 774.2, to allow the construction of an office building at 1111 New Jersey Avenue, S.E. (Square 743-N, Lot 78), in the C-3-C District.

HEARING DATE (original application): May 8, 2007

DECISION DATE (original application): May 8, 2007 (Bench Decision)

FINAL DATE OF ORDER (original application): December 13, 2007

DECISION ON MOTION TO EXTEND ORDER: June 2, 2009

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17604

The Underlying BZA Order

On May 8, 2007, the Board of Zoning Adjustment (the Board or BZA) approved the Applicant's request for special exception relief under Section 774.2 to waive the minimum rear yard depth requirement for a proposed 11-story commercial office building located within the C-3-C District at 1111 New Jersey Avenue, S.E. The subject property includes all of Lot 78 in Square 743-N. The Square is bounded by 1st Street on the west, L Street on the north, New Jersey Avenue on the east, and M Street on the south. The site contains approximately 16,406 square feet of land area and has approximately 157 feet of linear frontage on New Jersey Avenue, S.E. The building approved by the Board contains approximately 164,060 square feet of gross floor area (10.0 FAR) and has a maximum height of 130 feet. The proposed building also includes a three-level underground parking garage containing a total of 114 parking spaces, seventy-five of which count towards the off-street parking requirements. The Board authorized an order approving the original application, which was issued on December 13, 2007 (BZA Order 17604).

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 December 13, 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 April 24, 2009, the Applicant filed a motion to extend the effectiveness of BZA Order 17604, which expires on December 13, 2009, with the Board. (Exhibit 38). Advisory Neighborhood Commission 6D (ANC 6D) was the only other party to BZA Case 17604. The Applicant served copies of its motion to extend on ANC 6D, the Office of Planning (OP), and the District Department of Transportation (DDOT).

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.

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.¹

Criteria for Evaluating Motion to Extend

Section 3100.5 of the Regulations states in full:

¹ The Applicant made the request for an extension of time under Section 3100.5 and it was granted under that section. Nevertheless, the Applicant also analyzed its request pursuant to the text amending the Zoning Regulations that would specifically permit extensions of BZA Orders and clarify procedures for modification of approved plans that is in Zoning Commission Case No. 09-01. On May 11, 2009, the Zoning Commission took final action on Zoning Commission No. 09-01 to approve the text change. On June 2, 2009, the date of the hearing and decision on the motion to extend BZA Order 17604, the new text amendments had been promulgated, but had not become effective.

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 April 24, 2009, prior to the expiration date, tolled the effect of the order. 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 December 13, 2007 (Exhibits No. 12 and 33 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 December 13, 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 December 13, 2011.

VOTE: 3-0-2 (Marc D. Loud, Shane L. Dettman, and Gregory N. Jeffries to approve; two mayoral appointees (vacant) not participating, nor 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: JUN 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 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. 17604-A

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

Norman M. Glasgow, Jr., Esq.
Holland & Knight, LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006

NGA Associates, LLC
2101 Wisconsin Avenue, N.W.
Washington, D.C. 20007

Chairperson
Advisory Neighborhood Commission 6D
423 N Street, S.W.
Washington, D.C. 20024

Single Member District Commissioner 6D07
Advisory Neighborhood Commission 6D
919 5th Street, S.E.
Washington, D.C. 20003-4518

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

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. 17604-A
PAGE NO. 2

Bennett Rushkoff, Esq.
General Counsel
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

ATTESTED BY:



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