

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



**Application No. 17620-A of Leon and Peggy Robbins**, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirement under section 772, and a variance from the off-street parking requirements under subsection 2101.1, and pursuant to 11 DCMR § 3104.1, a special exception from the rear yard requirements under section 774, and floor area ratio requirements under section 1323, to allow the construction of a three-story mixed use building in the HS (H Street N.E. Neighborhood Commercial Overlay)/C-3-A District at premises 1383-85 H Street, N.E. (Square 1027, Lot 846).

**HEARING DATE (Orig. Application):** June 12, 2007 and January 15, 2008

**DECISION DATE (Orig. Application):** January 15, 2008

**FINAL ORDER ISSUANCE DATE (Orig. Application):** January 17, 2008

**DECISION ON MOTION TO EXTEND ORDER:** November 3 and 10, 2009

**ORDER ON MOTION TO EXTEND**  
**THE VALIDITY OF BZA ORDER NO. 17620**

The Underlying BZA Order

On January 15, 2008, the Board of Zoning Adjustment (the Board or BZA) approved the Applicant's request for variance relief from the requirements of lot occupancy and off-street parking and for special exception from the requirements for rear yards and floor area ratios, to allow construction of a three-story mixed use building in the HS (H Street N.E. Neighborhood Commercial Overlay)/C-3-A District. Thus, pursuant to 11 DCMR § 3104.1, the Board approved special exceptions from the rear yard requirements under section 774 and from the floor area ratio requirements under section 1323, and pursuant to 11 DCMR § 3103.2, variances from the lot occupancy requirements under section 772 and from the off-street parking requirements under subsection 2101.1, to construct a three-story mixed use building in the HS (H Street N.E. Neighborhood Commercial Overlay)/C-3-A District at premises 627-631 H Street, N.W. (Square 453, Lots 53 and 810). The Order was issued January 17, 2008. (BZA Order 17620)

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**BZA APPLICATION NO. 17620-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 January 17, 2010.

Section 3130.1<sup>1</sup> 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 September 14, 2009, the Board received a letter from the Applicant, which requested, pursuant to 11 DCMR §3130.6,<sup>2</sup> a two-year extension in the authority granted in the underlying BZA Order, which was due to expire January 17, 2010. (Exhibit 43). A copy of the request for an extension was served on the parties to the application, Advisory Neighborhood Commission 6A (ANC 6A) and the Office of Planning (OP). The Board received additional, supplemental material from the Applicant in support of the request for a time extension, pursuant to §3130.6. (Exhibits 44 and 45).

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 § 3130.6 of the Regulations, the Board extend the validity of its prior Order 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

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<sup>1</sup> 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.

<sup>2</sup> 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. 17620-A**  
**PAGE NO. 3**

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
    - (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 September 14, 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 under § 3130.6(a). The Applicant's inability to secure financing and the poor economic conditions in the District constitute the "good cause" required under § 3130.6(c)(1).

As required by § 3130.6(b), there is no substantial change in any of the material facts upon which the Board based its original approval. (Exhibit 43). 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 October 16, 2007 (Exhibit No. 29 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 January 17, 2012.

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 January 17, 2012.

**VOTE: 4-0-1** (Marc D. Loud, Meridith H. Moldenhauer, Shane L. Dettman, and Michael G. Turnbull to approve; no other Board member 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:   
**JAMISON L. WEINBAUM**  
Director, Office of Zoning

**BZA APPLICATION NO. 17620-A**  
**PAGE NO. 5**

**FINAL DATE OF ORDER: NOV. 17, 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. 17620-A**

As Director of the Office of Zoning, I hereby certify and attest that on NOV 17, 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:

Jennifer Fowler  
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Chairperson  
Advisory Neighborhood Commission 6A  
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Single Member District Commissioner 6A06  
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**BZA APPLICATION NO. 17620-A**  
**PAGE NO. 2**

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ATTESTED BY:



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