

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Zoning Adjustment



**Application No. 17627-A of RIA, LLC**, pursuant to 11 DCMR § 3103.2 , for a variance from the lot occupancy provisions under section 403, and a variance from the parking space requirements under subsection 2117.4, and pursuant to 11 DCMR § 3104.1, for a special exception allowing the conversion and addition to an existing building to permit a new eight (8) unit apartment house under section 353, in the R-5-A District, at premises 1007 Rhode Island Avenue, N.E. (Square 3870, Lot 49).

**HEARING DATE (Orig. Application):** June 26, 2007  
**DECISION DATE (Orig. Application):** July 31, 2007  
**FINAL ORDER ISSUANCE DATE (Orig. Application):** August 10, 2007  
**DECISION ON MOTION TO EXTEND ORDER:** June 2, 2009

**ORDER ON MOTION TO EXTEND**  
**THE VALIDITY OF BZA ORDER NO. 17627**

The Underlying BZA Order

On July 31, 2007, the Board of Zoning Adjustment (the Board or BZA) approved the Applicant's request for variance relief as well as special exception relief for the conversion and addition to an existing building to permit a new 8-unit apartment house in the R-5-A District. Thus, pursuant to 11 DCMR § 3103.2, the Board approved a variance from the lot occupancy requirements of § 403 and a variance from the parking space requirements under subsection 2117.4, and pursuant to 11 DCMR §3104.1, for a special exception pursuant to § 353, to allow the conversion and addition to an existing building to permit a new 8-unit apartment house, at premises 1007 Rhode Island Avenue, N.E. (Square 3870, Lot 49). The Order was issued August 10, 2007. (BZA Order 17627)

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 August 10, 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 Board received a letter from the Applicant, which requested a two-year extension in the authority granted in the underlying BZA Order, which is due to expire August 10, 2009. (Exhibit 42). A copy of the request for an extension was served on the parties to the application, Advisory Neighborhood Commission 5B (ANC 5B) 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.

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.<sup>1</sup>

### 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

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<sup>1</sup> 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 17627, the new text amendments had been promulgated, but had not become effective.

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 August 10, 2007 (Exhibit No. 10 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 August 10, 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 August 10, 2011.

**VOTE: 3-0-2** (Marc D. Loud, Shane L. Dettman, and Michael G. Turnbull 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. 17627-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:

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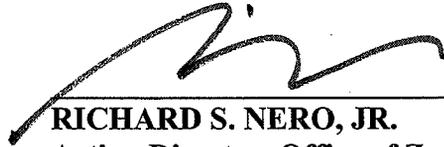
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**ATTESTED BY:**



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