

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



**Application No. 17673-A of Gallery Square LLC**, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure requirements under section 411, a special exception to reduce the required rear yard under section 774, and a special exception to reduce the number of required parking spaces by no more than 25 percent under section 2108, and pursuant to 11 DCMR § 3103.2, variances from the accessibility requirements for parking spaces under section 2117.4 and the off-street loading and service delivery space requirements under section 2201, to permit the development of a 10-story building with retail on the first and second floors and offices above in the DD/C-3-C District at premises 627-631 H Street, N.W. (Square 453, Lots 53 and 810).

**HEARING DATE (Orig. Application):** October 16, 2007  
**DECISION DATE (Orig. Application):** October 16, 2007 (Bench Decision)  
**FINAL ORDER ISSUANCE DATE (Orig. Application):** October 17, 2007  
**DECISION ON MOTION TO EXTEND ORDER:** September 15, 2009

**ORDER ON MOTION TO EXTEND**  
**THE VALIDITY OF BZA ORDER NO. 17673**

The Underlying BZA Order

On October 16, 2007, the Board of Zoning Adjustment (the Board or BZA) approved the Applicant's request for special exception from the requirements for roof structures, rear yards, and parking spaces, and variance relief from the requirements for accessibility for parking spaces and off-street loading and service delivery space, to construct a 10-story building with retail on the first and second floors and offices above in the DD/C-3-C District. Thus, pursuant to 11 DCMR § 3104.1, the Board approved a special exception from the roof structure requirements under section 411, a special exception to reduce the required rear yard under section 774, and a special exception to reduce the number of required parking spaces by no more than 25 percent under section 2108, and pursuant to 11 DCMR § 3103.2, variances from the accessibility requirements for parking spaces

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under section 2117.4 and the off-street loading and service delivery space requirements under section 2201, to construct a 10-story building with retail on the first and second floors and offices above in the DD/C-3-C District at premises 627-631 H Street, N.W. (Square 453, Lots 53 and 810). The Order was issued October 17, 2007. (BZA Order 17673)

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 October 17, 2009.

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 July 30, 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 October 17, 2009. (Exhibit 44). A copy of the request for an extension was served on the parties to the application, Advisory Neighborhood Commission 2C (ANC 2C) 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 46 and 47).

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.

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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.

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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

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

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- (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 July 30, 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 46). 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. 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 October 17, 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 October 17, 2011.

**VOTE: 4-0-1** (Marc D. Loud, Meridith H. Moldenhauer, Shane L. Dettman, and Michael G. Turnbull to approve; one mayoral (vacant) appointee 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: *Jamison L. Weinbaum*  
**JAMISON L. WEINBAUM**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER: SEP 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



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

Yeni Wong  
Gallery Place Square LLC  
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Washington, D.C. 20001

Chairperson  
Advisory Neighborhood Commission 2C  
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Washington, D.C. 20001

Single Member District Commissioner 2C03  
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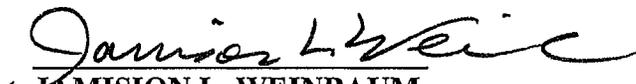
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**ATTESTED BY:**   
**JAMISION L. WEINBAUM**  
**Director, Office of Zoning**