

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17676-A of Innovative Recyclers, Inc., pursuant to 11 DCMR § 3103.2, for a variance from building height requirements under subsection 840.1, and pursuant to 11 DCMR § 3104.1, for a special exception to establish a solid waste handling facility under subsection 802.4, in the LO/C-M-1 District at premises 2225 Lawrence Avenue, N.E. (Square 4106, Lot 820).

HEARING DATE (Orig. Application): October 23, 2007
DECISION DATE (Orig. Application): October 23, 2007 (Bench Decision)
FINAL ORDER ISSUANCE DATE (Orig. Application): October 26, 2007
DECISION ON MOTION TO EXTEND ORDER: November 3 and 10, 2009

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17676

The Underlying BZA Order

On October 23, 2007, the Board of Zoning Adjustment (the Board or BZA) approved the Applicant's request for variance relief from building height requirements and for a special exception to establish a solid waste handling facility in the LO/C-M-1 District. Thus, pursuant to 11 DCMR § 3103.2, the Board granted a variance from building height requirements under subsection 840.1 and pursuant to 11 DCMR § 3104.1, the Board approved a special exception to establish a solid waste handling facility in the LO/C-M-1 District at premises 2225 Lawrence Avenue, N.E. (Square 4106, Lot 820). The Order was issued October 26, 2007. (BZA Order 17676)

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 26, 2009.

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. 17676-A
PAGE NO. 2

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 August 24, 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 October 26, 2009. (Exhibit 37). The Board received additional, supplemental material from the Applicant in support of the request for a time extension, pursuant to §3130.6. (Exhibit 39).

The Applicant is requesting a two-year extension in the authority granted in the underlying BZA Order because of the Applicant's inability in securing a permit from DCRA and the Applicant's resultant inability to obtain financing due to that delay in its securing the necessary permits as well as economic and market conditions beyond the Applicant's control. The Applicant has, over the past two years, sought to secure the necessary permits and financing 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 the permits and 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

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

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. 17676-A
PAGE NO. 3

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 August 24, 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 the necessary permits and 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. 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 26, 2007 (Exhibit No. 35 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 26, 2011.

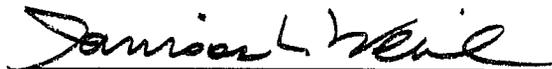
Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this request for extension of time be **GRANTED** until October 17, 2011.

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

Director, Office of Zoning

FINAL DATE OF ORDER:

NOV 20 2009

BZA APPLICATION NO. 17676-A
PAGE NO. 5

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
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BZA APPLICATION NO. 17676-A

As Director of the Office of Zoning, I hereby certify and attest that on NOV 20, 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:

George Rodgers, Jr., President
Innovative Recyclers, Inc.
2225 Lawrence Avenue, N.E.
Washington, D.C. 20018

Philip R. Croessmann, AIA, Esq.
Michael Pavlovich, Esq.
Westberg Croessmann, P.C.
1005 North Glebe road, Suite 600
Arlington, VA 22201

Chairperson
Advisory Neighborhood Commission 5B
2100 New York Avenue, N.E.
Washington, D.C. 20002

Single Member District Commissioner 5B02
Advisory Neighborhood Commission 5B
2429 Hamlin Street, N.E.
Washington, D.C. 20018

Harry Thomas, Jr., City Councilmember
Ward Five
1350 Pennsylvania Avenue, N.W.
Suite 107
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. 17676-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:


JAMISION L. WEINBAUM
Director, Office of Zoning