

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17721-A of Camden Development, Inc., through NOMA Development LLC, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure design provisions under subsections 411.3, 411.5, and 411.11, to allow the construction of a new 14-story apartment building in the C-3-C District, at premises 60 L Street, N.E. (Square 673, Lot 841).

HEARING DATE (Orig. Application): February 26, 2008
DECISION DATE (Orig. Application): February 26, 2008 (Bench Decision)
FINAL ORDER ISSUANCE DATE (Orig. Application): March 28, 2008
DECISION ON MOTION TO EXTEND ORDER: April 13, 2010

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17721

The Underlying BZA Order

On February 26, 2008, the Board of Zoning Adjustment (the Board or BZA) approved the Applicant's request for a special exception from the roof structure design provisions under subsections 411.3, 411.5, and 411.11, to allow the construction of a new 14-story apartment building in the C-3-C District. Thus, pursuant to 11 DCMR § 3104.1, the Board granted special exceptions from the roof structure design provisions under subsections 411.3, 411.5, and 411.11, to allow the construction of a new 14-story apartment building in the C-3-C District, at premises 60 L Street, N.E. (Square 673, Lot 841). The Order was issued March 28, 2008. (BZA Order 17721)

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 March 28, 2010.

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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 February 26, 2010, the Board received a letter, dated February 26, 2010, 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 March 28, 2010. (Exhibit 33).

The Applicant is requesting a two-year extension in the authority granted in the underlying BZA Order because, due to the deterioration of the real estate market in Washington, D.C., the building is not financially viable at this time. The Applicant provided a signed and notarized affidavit (Exhibit 33, Exhibit B) in which it noted the difficulties and risks it faces unless it can extend the underlying Order. The Applicant's letter indicates that occupancy and rent growth have dropped dramatically for residential properties in the District and that there is an influx of residential buildings sitting vacant. Projects that have gone forward, as well as existing residential projects, have had to make significant concessions to attract tenants. The Applicant concludes that it cannot take the risk in this market that once the project is constructed that it will not be at full capacity, given its carrying costs and construction costs. Moreover, the Applicant has invested a significant sum of money in the site (approximately \$53 million), including spending over \$10 million since the purchase of the Property in the form of architectural design costs, preliminary site preparation, civil engineering, legal fees, and property taxes and interest. The Applicant further clarified that it has no intention of abandoning the Project, but simply needs additional time to allow the residential market to rebound to make the Project successful. (Exhibit 33).

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.

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A response to the Applicant's motion was filed by the Office of Planning (OP), which issued a report in support of the time extension.³ (Exhibit 34).

The project is within the boundaries of Advisory Neighborhood Commission (ANC) 6C. While the proposal for a time extension was forwarded to ANC 6C, the ANC did not file a report regarding the motion.

According to the Applicant, the reasons for its request to the Board to extend the time of the Order are because of its inability to proceed without making significant concessions due to the unstable economic market and market conditions in the District. The extension would allow the Applicant the additional time in which to secure the permits and financing and ultimately tenants. 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 proceed with the Project.

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

³ The OP report was submitted on April 12, 2010, less than seven days before the Board's public hearing. At OP's request, the Board waived its rule and accepted the report into the record.

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- (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 February 26, 2010, 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 March 28, 2008 (Exhibits No. 10, 28 and 30 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.

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Accordingly, pursuant to § 3130.6 of the Regulations, the Board hereby extends the validity of the underlying Order, as conditioned, for a period not to exceed two years from the current expiration date, thereby establishing a new expiration date of March 28, 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 March 28, 2012.

VOTE: 3-0-2 (Nicole C. Sorg, Meridith H. Moldenhauer, Shane L. Dettman to approve; no other Board members 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: APR 15 2010

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

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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.