

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17723-A of Bozzuto Development Company, pursuant to 11 DCMR § 3103.2, for a variance from the parking requirements under subsection 2101.1, a variance from the loading requirements under subsection 2201.1, and variances from the lot occupancy and nonconforming structure requirements under subsections 772 and 2001.3, respectively, to allow the construction of a residential building in the DD/C-2-C District, at premises 460 New York Avenue, N.W. (Square 515N, Lot 828).

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: March 2, 2010

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17723

The Underlying BZA Order

On February 26, 2008, the Board of Zoning Adjustment (the Board or BZA) approved the Applicant's request for variance relief from the requirements of parking, loading, and lot occupancy and nonconforming structure, to allow the construction of a residential building in the DD/C-2-C District. Thus, pursuant to 11 DCMR § 3103.2, the Board granted variances from the parking requirements under § 2101.1, from the loading requirements under § 2201.1, and from the requirements of lot occupancy and nonconforming structure under §§ 772 and 2001.3, to allow the construction of a residential building in the DD/C-2-C District, at premises 460 New York Avenue, N.W. (Square 515N, Lot 828). The Order was issued March 28, 2008. (BZA Order 17723)

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 January 29, 2010, 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 March 28, 2010. (Exhibit 38). The Board received additional, supplemental material from the Applicant in support of the request for a time extension, pursuant to §3130.6. (Exhibit 41).

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 Applicant has been unable to obtain the necessary financing commitment to begin the building renovation and construction, despite attempts to obtain financing for the project. The Applicant also cited the decrease of residential leasing activity in the Downtown area which has resulted in a negative absorption rate, leading to a residential market that has become too soft for the introduction of new space. Despite the lack of financing, the Applicant has still funded work on plans and construction drawings necessary to apply for a building permit from the Department of Consumer and Regulatory Affairs for the Project. (Exhibit 38).

Several responses to the Applicant's motion were filed, one from the Office of Planning (OP) and the other from the affected Advisory Neighborhood Commission (ANC). The Office of Planning (OP) issued a report in support of the time extension, and requested that the Applicant submit documentation of, or a notarized description of, its unsuccessful attempts to secure financing. (Exhibit 40). The Applicant responded by filing the documentation OP requested, including two signed and notarized affidavits. (Exhibit 41).

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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The project is within the boundaries of ANC 6C. ANC 6C filed a report in support of the motion and project. (Exhibit 39).³

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 secure financing in an 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. 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

³ The ANC's report sought to have the Applicant address two issues, having asked that the developer: (1) put into place a maintenance plan for upkeep of the property during the two-year period; and (2) explore ways to make the structure a contributing use to the community during the extension of time. (Exhibit 39). In response the Applicant attached a Site Maintenance Plan (Exhibit 41, Attachment C) so as "to ameliorate the effects of the Property's vacancy prior to the beginning of construction under the Order" and indicated its willingness to "meet with [the ANC] and surrounding neighbors to explore the feasibility of potential interim uses for the Property prior to the construction of the project...." (Exhibit 41).

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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 January 29, 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 (Exhibit No. 34 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, 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 (Meridith H. Moldenhauer, Nicole C. Sorg, Marc D. Loud 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: MAR 11 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 OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL

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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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As Director of the Office of Zoning, I hereby certify and attest that on March 11, 2010, 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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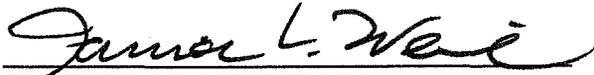
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ATTESTED BY:



JAMISION L. WEINBAUM

Director, Office of Zoning