

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



**Application No. 17753-B of W Street Acquisitions LLC**, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a variance from the lot area requirements of section 401.3, a variance from the lot occupancy requirements of section 403.2, a variance from the rear yard requirements of section 404.1, variances from the side yard requirements of sections 405.3 and 405.9, a variance from the front yard requirements of section 2516.5(b), and a special exception under section 2516 which authorizes exceptions to building lot control in residence districts to permit the construction of a new residential development in the R-4/R-3 District at premises 1226-1252 W Street, S.E. (Square 5782, Lots 98, 99, 694, 810, 811, 812 and 1022).

**HEARING DATE (Orig. Application):** February 19, 2008  
**DECISION DATE (Orig. Application):** February 19, 2008 (Bench Decision)  
**FINAL ORDER ISSUANCE DATE:** February 21, 2008  
**CORRECTED ORDER ISSUANCE DATE:** December 8, 2009 (No. 17753-A)  
**DECISION ON MOTION TO EXTEND ORDER:** April 13, 2010

**ORDER ON MOTION TO EXTEND**  
**THE VALIDITY OF BZA ORDER NO. 17753**

The Underlying BZA Order

On February 19, 2008, the Board of Zoning Adjustment (the Board or BZA) approved the Applicant's request for variances from the lot area requirements of § 401.3, the lot occupancy requirements of § 403.2, the rear yard requirements of § 404.1, the side yard requirements of §§ 405.3 and 405.9, and the front yard requirements of § 2516.5(b) and a special exception under § 2516 which authorizes exceptions to building lot control in residence districts to permit the construction of a new residential development in the R-4/R-3 District. Thus, pursuant to 11 DCMR §§ 3103.2 and 3104.1, the Board granted for a variance from the lot area requirements of § 401.3, a variance from the lot occupancy

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requirements of § 403.2, a variance from the rear yard requirements of § 404.1, variances from the side yard requirements of §§ 405.3 and 405.9, a variance from the front yard requirements of § 2516.5(b), and a special exception under § 2516 which authorizes exceptions to building lot control in residence districts to permit the construction of a new residential development in the R-4/R-3 District at premises 1226-1252 W Street, S.E. (Square 5782, Lots 98, 99, 694, 810, 811, 812 and 1022). The Order was issued February 21, 2008. (BZA Order 17753).<sup>1</sup>

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 February 21, 2011.

Section 3130.1<sup>2</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 February 18, 2010, the Board received a February 17, 2010 letter from the Applicant, which requested, pursuant to 11 DCMR § 3130.6,<sup>3</sup> a two-year extension in the authority granted in the underlying BZA Order, which was due to expire February 21, 2010. (Exhibit 43).

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 until recently to begin the project, despite attempts to obtain financing for the project ever since the Board originally approved it. To meet its burden of proof, the Applicant provided a signed and notarized affidavit which indicated that the Applicant

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<sup>1</sup> A corrected Order was issued December 8, 2009 (BZA Order 17753-A) to accurately reflect the hearing and decision dates. Consequently, this order for the Motion for a Time Extension of the original Order is Order No. 17753-B.

<sup>2</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>3</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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has diligently sought financing and attempted to move forward with development of the site since the time of the BZA's original approval. The Applicant also noted that recently it reached an agreement in principle with a lender that will enable the Applicant to proceed with the project. The Applicant needs the time extension to continue to work with the prospective lender to negotiate the terms of the deal and execute financing documents. Meanwhile, the Applicant retained architectural and engineering professionals to prepare construction drawings and engineering work in order to proceed to obtain a building permit as soon as financing is secured. The Applicant further demonstrated its commitment to the project by obtaining a raze permit and demolishing an unstable, dilapidated building on the site to prepare the site for construction. (Exhibit 43).

A response to the Applicant's motion was filed from the Office of Planning (OP). OP issued a report in support of the time extension. (Exhibit 44). The project is within the boundaries of ANC 8A. ANC 8A did not file a report.

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 until recently 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 complete its negotiations with the recently-identified potential lender. 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;

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- (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)

Furthermore, pursuant to 11 DCMR § 3130.9, for a request for a time extension to toll the expiration date of the underlying order for the sole purpose of allowing the Board to consider the request, the motion must be filed at least 30 days prior to the date on which an order is due to expire. The Applicant filed its request on February 18, 2010, which was less than the required 30-day period for tolling. By consensus, pursuant to § 3100.5, the Board granted the Applicant's request for flexibility and tolled the effect of the underlying Order.

Also, the Board found that the Applicant has met the criteria set forth in § 3130.6. The motion for a time extension 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).

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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 February 21, 2008 (Exhibit No. 12 in the record)<sup>4</sup>. 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.

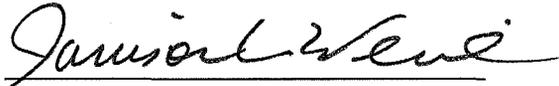
Accordingly, pursuant to § 3130.6 of the Regulations, the Board hereby extends the validity of the underlying Order, for a period not to exceed two years from the current expiration date, thereby establishing a new expiration date of February 21, 2012.

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 February 21, 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 19 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.

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<sup>4</sup> The corrected Order dated December 8, 2009 did not alter the plans approved by the Board in the original Order dated February 21, 2008.

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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.