

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17792-A of Armenian Genocide Museum and Memorial, Inc., pursuant to 11 DCMR § 3104.1, for a special exception from the rear yard requirements under subsection 774.2, to establish a museum and memorial, in the SHOP/C-4 District at 615 14th Street, N.W. (Square 253, Lot 67).

HEARING DATE (Orig. Application): July 8, 2008
DECISION DATE (Orig. Application): July 8, 2008 (Bench Decision)
FINAL ORDER ISSUANCE DATE: July 8, 2008
DECISION ON MOTION TO EXTEND ORDER: June 22, 2010

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17792

The Underlying BZA Order

On July 8, 2008, the Board of Zoning Adjustment (the “Board” or “BZA”) approved the Applicant’s request for a special exception from the rear yard requirements under § 774.2, to establish a museum and memorial, in the SHOP/C-4 District. Thus, pursuant to 11 DCMR § 3104.1, the Board granted a special exception from the rear yard requirements under § 774.2, to establish a museum and memorial, in the SHOP/C-4 District at 615 14th Street, N.W. (Square 253, Lot 67). The Order was issued July 8, 2008. (BZA Order 17792).

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 July 8, 2010.

Section 3130.1¹ states:

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.

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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 May 20, 2010, the Board received a letter dated May 20, 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 July 8, 2010. (Exhibit 33).

The Applicant is requesting a two-year extension in the authority granted in the underlying BZA Order because, in part, due to the unstable and unpredictable economic and real estate market conditions, and the continuing economic crisis these have caused, the Applicant has been prevented from securing major contributions and project financing to allow the Applicant to proceed with the project. An even greater impediment to the Applicant's proceeding with the approved plans has been ongoing, complex and protracted litigation which has hindered the Applicant's fundraising efforts with other potential contributors, as well as financing efforts with potential lenders. To meet its burden of proof, the Applicant provided a signed and notarized affidavit which indicated that the Applicant has diligently sought financing and attempted to move forward with development of the approved plans since the time of the BZA's original approval, but that despite those efforts, the Applicant has been unable to secure project financing while the litigation has worked through the D.C. Federal courts. In March, 2010, the presiding judge issued decisions at the summary judgment level and, at this time, the Applicant is encouraged that resolution of the litigation will be reached in time to allow the Applicant to secure the needed financing to move forward with the approved plans. (Exhibit 33, Exhibit B).

On June 15, 2010, the Office of Planning ("OP") filed a memorandum in support of the Applicant's request for a time extension of the underlying Order. (Exhibit 34). The project is within the boundaries of ANC 2F. The Certificate of Service submitted by the Applicant with the time extension application indicates that it was served on ANC 2F, the only party to the original application, on May 20, 2010. ANC 2F did not file a report.

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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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 contributions and other financing in an unstable economic market and market conditions in the District as well as the impediments to securing funding caused by pending, complex and protracted litigation. The extension would allow the Applicant the additional time in which to resolve the litigation and secure 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
 - (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;

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- (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 May 20, 2010, which was within the required 30-day period for tolling.

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 resolve pending, complex and protracted litigation and 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. 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 July 8, 2008 (Exhibit No. 24F 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 July 8, 2012.

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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 July 8, 2012.

VOTE: 4-0-1 (Shane L. Dettman, Meridith H. Moldenhauer, Nicole C. Sorg, Michael G. Turnbull (by absentee ballot) to approve; no other Board member (vacant) 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: JUL 01 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 ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION,

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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 JUL 01 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:

Norman M. Glasgow, Jr., Esq. and Dennis R. Hughes, Esq.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006

Chairperson
Advisory Neighborhood Commission 2F
5 Thomas Circle, N.W.
Washington, D.C. 20005

Single Member District Commissioner 2F03
Advisory Neighborhood Commission 2F
1224 13th Street, N.W.
#001
Washington, D.C. 20005

Jack Evans, Councilmember
Ward Two
1350 Pennsylvania Avenue, N.W.
Suite 106
Washington, D.C. 20004

Melinda Bolling, Esq.
Acting General Counsel
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W.
Washington, D.C. 20024

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

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ATTESTED BY:


JAMISION L. WEINBAUM
Director, Office of Zoning