

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17806-A of Mid-Atlantic Realty Partners, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 772, a variance from the rear yard requirements under § 774, a variance from the limitation on compact parking space requirements under § 2115.2, and a variance from the off-street loading facility requirements under subsection 2201.1, to permit the construction of a multiple dwelling (residential) building with ground floor retail in the DD/C-2-C District at the southeast corner of the intersection of 6th and K Streets, N.W. (Square 484, Lots 23, 811-813, and 826).

HEARING DATE (Orig. Application):	September 9, 2008
DECISION DATE (Orig. Application):	September 9, 2008 (Bench Decision)
FINAL ORDER ISSUANCE DATE:	September 11, 2008 (Summary Order)
MOTION TO EXTEND ORDER	
DECISION DATES:	September 10, 2010; September 28, 2010; October 19, 2010; and December 14, 2010

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17806

The Underlying BZA Order

On September 9, 2008, the Board of Zoning Adjustment (“Board” or “BZA”) approved the Applicant’s request for a variance from the lot occupancy requirements under § 772, a variance from the rear yard requirements under § 774, a variance from the limitation on compact parking space requirements under § 2115.2, and a variance from the off-street loading facility requirements under § 2201.1, to permit the construction of a multiple dwelling (residential) building with ground floor retail in the DD/C-2-C District. Thus, pursuant to 11 DCMR § 3103.2, the Board granted a variance from the lot occupancy requirements under § 772, a variance from the rear yard requirements under § 774, a variance from the limitation on compact parking space requirements under § 2115.2, and a variance from the off-street loading facility requirements under § 2201.1, to permit the construction of a multiple dwelling (residential) building with ground floor retail in the DD/C-2-C District at the southeast corner of the intersection of 6th and K Streets, N.W. (Square 484, Lots 23, 811-813, and 826). The Order was issued September 11, 2008. (BZA Order 17806.) (Exhibit 27.)

BZA APPLICATION NO. 17806-A
PAGE NO. 2

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 September 11, 2010.

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 6, 2010, the Board received a letter, dated August 6, 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 September 11, 2010. (Exhibit 30.)

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 frozen credit markets, and the continuing economic crisis these have caused, the Applicant has been unable to obtain the necessary financing commitment 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 has diligently sought financing and attempted to move forward with development of the site since the time of the BZA's original approval. (Exhibit 35, Tab A.) The Applicant also submitted a letter from its real estate broker, which stated that neither the Applicant nor its broker has yet seen improvement in the market for relatively small-scale, infill residential developments such as this. The Applicant's real estate broker indicated that while it has been working with a number of lenders and capital sources on behalf of the Applicant, these sources have been unwilling to finance residential deals given current market conditions for these projects. (Exhibit 30, Tab B; Exhibit 35, Tab B.)

The Office of Planning ("OP") submitted a report, dated September 14, 2010, in support of the Applicant's motion for a time extension of BZA Order 17806. (Exhibit 31.) The project is within the boundaries of Advisory Neighborhood Commission ("ANC") 6C. ANC 6C filed a report, dated September 13, 2010, indicating that at a duly noticed, regularly scheduled, public

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. 17806-A
PAGE NO. 3

meeting of the ANC at which a quorum was present, the ANC voted unanimously, 8:0:0, to support the two-year extension, with the caveat that the Applicant's representative ensure the maintenance of the property during the two-year period. (Exhibit 32.)

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 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;
 - (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 August 6, 2010, which met 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 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 2, 2008. (Exhibit No. 11 (Plans).) 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.

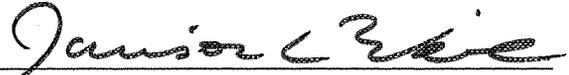
Accordingly, pursuant to § 3130.6 of the Regulations, the Board hereby extends the validity of the underlying Order, as conditioned, for a period not to exceed two years from the current expiration date, thereby establishing a new expiration date of September 11, 2012.

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 September 11, 2012.

VOTE: 3-0-2 (Meridith H. Moldenhauer, Jeffrey L. Hinkle, Michael G. Turnbull, by absentee vote, to approve; Nicole C. Sorg and third Mayoral appointee (vacant) 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: DEC 23 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, 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
Board of Zoning Adjustment



BZA APPLICATION NO. 17806-A

As Director of the Office of Zoning, I hereby certify and attest that on DEC 23 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 Kyrus L. Freeman, Esq.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006

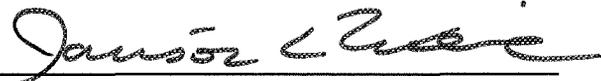
Chairperson
Advisory Neighborhood Commission 6C
P.O. Box 77876
Washington, D.C. 20013

Single Member District Commissioner 6C01
Advisory Neighborhood Commission 6C
901 New Jersey Avenue, N.W.
Washington, D.C. 20001

Tommy Wells, Councilmember
Ward Six
1350 Pennsylvania Avenue, N.W., Suite 408
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

ATTESTED BY:


JAMISION L. WEINBAUM
Director, Office of Zoning

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