

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17827-A of Jobs Partnership of Greater Washington for a Motion for a Two-Year Extension of BZA Order No. 17827, pursuant to 11 DCMR § 3130, and for a waiver of the 30-day filing requirements of 11 DCMR § 3130.9. The original application was pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception to allow a job training program as a church program to be housed in a new addition to the New Commandment Baptist Church under section 216, and variances from the required number of off-street parking spaces under subsection 2101.1 and from the required size of parking spaces under subsection 2115.1 in the R-4 District at premises 625 and 633 Park Road, N.W. (Square 3038, Lots 81 and 831).

HEARING DATES (Orig. Application): September 9, 2008, October 14, 2008, and February 24, 2009

DECISION DATE (Orig. Application): February 24, 2009 (Bench Decision)

FINAL ORDER ISSUANCE DATE: March 2, 2009 (Summary Order)

DATE OF DECISION ON MOTION TO EXTEND ORDER: April 12, 2011

SUMMARY ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17827 AND TO WAIVE THE 30-DAY FILING
REQUIREMENTS OF 11 DCMR § 3130.9

The Underlying BZA Order

On February 24, 2009, the Board of Zoning Adjustment (“Board” or “BZA”) approved the Applicant’s request for a special exception to allow a job training program for ex-offenders as a church program to be housed in a new addition to the New Commandment Baptist Church under § 216, and variances from the required number of off-street parking spaces under § 2101.1 and from the required size of parking spaces under § 2115.1 in the R-4 District at premises 625 and 633 Park Road, N.W. (Square 3038, Lots 81 and 831). Both the Office of Planning (“OP”) and the affected Advisory Neighborhood Commission (“ANC”) 1A supported the relief. BZA Order No. 17827 approving the application was issued March 2, 2009 and became effective March 12, 2009. (Exhibit 46.)

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BZA APPLICATION NO. 17827-A
PAGE NO. 2

Motion to Extend Validity of Order No. 17827 and Waive 30-Day Filing Requirement of § 3130.9

Motion to Extend Validity

On March 10, 2011, two days before BZA Order No. 17827 was set to expire, the Board received a letter from the Applicant, which requested, pursuant to 11 DCMR § 3130.6, a two-year extension in the authority granted in BZA Order No. 17827. The Applicant is requesting a two-year extension in the authority granted in that 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, together with delays in obtaining financial assistance from the District government, all of which obstacles are outside of the Applicant's control, the Applicant has been unable to obtain all of the necessary financing commitments to begin the project, despite attempts to do so since the Board originally approved it. (Exhibit 48.)

Waiver of 11 DCMR § 3130.9

The application was filed on March 10, 2011, two days before the underlying order, BZA Order No. 17827, was due to expire. Motions to extend the validity of an order are required to be filed at least 30 days prior to the date on which an order is due to expire, pursuant to 11 DCMR § 3130.9. In both the March 10, 2011 submission (Exhibit 48) and a subsequent filing dated March 29, 2011, (Exhibit 50), the Applicant requested that the Board waive the requirements of 11 DCMR § 3031.9, whereby a motion to extend the validity of an order is required to be filed at least 30 days prior to the expiration of the order whose validity is to be extended. That subsection reads as follows:

A request for a time extension filed at least thirty (30) days prior to the date upon which an order is due to expire shall toll the expiration date for the sole purpose of allowing the Board to consider the request.

(11 DCMR § 3130.9.)

The Applicant claimed that it was requesting a waiver from this requirement because there was confusion regarding the meaning of the subsection and whether the Board has the authority to consider an application to extend the validity of an order that is filed less than 30 days prior to when the order is due to expire. The Applicant opined that the Board should be able to waive the requirements of § 3130.9 and entertain motions to extend the validity of an order even when they are filed less than 30 days prior to an order's expiration date. The Applicant also indicated that, in the instant case, all the parties to the case were supportive of the original case and would not be prejudiced, since they had all been served and thereby given at least 30 days in which to review and respond to the extension request, per § 3130.6(a). (Exhibits 48 and 50.)

BZA APPLICATION NO. 17827-A
PAGE NO. 3

In its deliberations on the motion to waive 11 DCMR § 3130.9, the Board found that the subsection was not confusing and reminded parties that they would be required to file motions to extend the validity of an order at least 30 days prior to the expiration date of the order. Nevertheless, the Board granted the waiver of the requirements of 11 DCMR § 3130.9 in this case, finding that no party was prejudiced by the granting of the waiver and to consider the motion to extend.

The Merits of the Motion to Extend.

To meet its burden of proof under 11 DCMR § 3130.6, the Applicant provided a letter from the Applicant's president, Rev. Stephen E. Tucker. Rev. Tucker indicated that the Applicant's project has not changed, but has been temporarily stalled since the transition after the 2010 election, which led to a delay in obtaining the public financial assistance from the Deputy Mayor for Planning and Economic Development ("DMPED") upon which the project is dependent. DMPED only recently requested a new construction finance plan. The Applicant, in partnership with City First Bank, has secured new market tax credits and is awaiting the approval of the new finance plan and the granting of additional funding from DMPED. An extension of the underlying order is needed to allow the project to be completed, given the delay it encountered in obtaining financing and approval of its new finance plan. (Exhibit 48, Tab C.)

The Office of Planning ("OP"), by memorandum dated April 5, 2011, recommended approval of the requested extension. (Exhibit 51.) The project is within the boundaries of ANC 1A. The ANC Single Member District Commissioner 1A09 filed a letter of support on April 11, 2011, indicating that (1) the Applicant had provided the ANC a copy of the application at least 30 days before the scheduled hearing on April 12, 2011, (2) nothing about the originally approved application had changed, and (3) the Applicant's impediment to moving forward on the project was a delay in funding, most of which was coming from District government sources and that the funding delay was outside of the Applicant's control. (Exhibit 53.) Additionally, a letter of support, dated April 8, 2011, was submitted for the record by the Councilmember representing Ward 1. (Exhibit 52.)

According to the Applicant, the reasons for its request to the Board to extend the time of BZA Order No. 17827 are because of a delay in its ability to secure financing and obtain approval of its financing plan. The extension would allow the Applicant the additional time in which to secure financing and gain the necessary approvals. Accordingly, the Applicant requested that, pursuant to § 3130.6 of the Zoning 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.

BZA APPLICATION NO. 17827-A
PAGE NO. 4

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.)

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 financing and approval of its new financing plan 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 2, 2009 (Exhibit No. 40 (Plans)) in the record. There have been

BZA APPLICATION NO. 17827-A
PAGE NO. 5

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 Zoning 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 12, 2013.

Pursuant to 11 DCMR § 3100.5, 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 12, 2013, within which time an application shall be filed for a building permit. In all other respects Order No. 17827 and the plans approved therein remain unchanged.

VOTE: 3-0-2 (Meridith H. Moldenhauer, Nicole C. Sorg, and Jeffrey L. Hinkle to Approve; No other Board members participating or 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

APR 22 2011

FINAL DATE OF ORDER: _____

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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BZA APPLICATION NO. 17827-A

As Director of the Office of Zoning, I hereby certify and attest that on **APR 22 2011**, 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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