

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 17837-B of Hillcrest Homes Associates LP, Motion for a Two-Year Extension of BZA Order No. 17837, pursuant to § 3130 of the Zoning Regulations.

The original application was pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the maximum number of building stories under § 400, a variance from the lot area and width requirements under § 401, a variance from the rear yard requirements under § 404, a variance from the side yard requirements under § 405, a special exception to permit two or more principal buildings or structures on a single subdivided lot under § 2516, and a variance from the requirement of § 2516.5 that theoretical lots allowed pursuant to § 2516 provide open space in front of the building entrances to construct a new residential development consisting of 54 one-family detached dwellings in the R-1-B District at premises north side of Southern Avenue, S.E., just west of Branch Avenue, S.E., (Parcels 208/4, 208/61, 208/64, 208/65, and 215/27).

HEARING DATE (Orig. Application):	November 18, 2008
DECISION DATE (Orig. Application):	November 18, 2008
ORDER ISSUANCE DATE (No. 17837):	June 23, 2009
DATE OF DECISION ON RECONSIDERATION:	July 28, 2009
ORDER ISSUANCE DATE ON RECONSIDERATION:	November 20, 2009
D.C. COURT OF APPEALS DECISION:	August 25, 2011
DECISION DATE TO EXTEND ORDER:	September 17, 2013

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17837

The Underlying BZA Order

On November 17, 2008, the Board of Zoning Adjustment ("Board" or "BZA") granted approval of Hillcrest Homes LP ("Applicant") for a variance from the maximum number of building stories under § 400, a variance from the lot area and width requirements under § 401, a variance from the rear yard requirements under § 404, a variance from the side yard requirements under § 405, a special exception to permit two or more principal buildings or structures on a single subdivided lot under § 2516, and a variance from the requirement of § 2516.5 that theoretical lots allowed pursuant to § 2516 provide open space in front of the building entrances to construct a

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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new residential development consisting of 54 one-family detached in the R-1-B District at premises north side of Southern Avenue, S.E., just west of Branch Avenue, S.E., (Parcels 208/4, 208/61, 208/64, 208/65, and 215/27). The Board issued its written order on June 23, 2009 ("Order").

A party-opponent to the new residential development filed a motion for reconsideration of the Order. The Board denied the motion by written order issued November 20, 2009. Thereafter, opponents petitioned the District of Columbia Court of Appeals to review the Order. By decision published August 25, 2011, the Court of Appeals affirmed the Order.

Pursuant to § 3130.1 of the Zoning Regulations, an order of the Board is valid for a period of two years from the date it was issued. When a petition for review of the order is filed with the D.C. Court of Appeals, the two-year time period commences to run from the decision date of the court's final determination of the appeal. (11 DCMR § 3130.5.) Accordingly, the two-year time period for the Order began to run on August 25, 2011, and was scheduled to expire on August 25, 2013. Pursuant to § 3130.9, the Applicant's request for a time extension tolled the expiration date of the Order for the sole purpose of allowing the Board to consider the request.

Motion to Extend Validity of Order

On July 25, 2013, the Applicant submitted to the Board a request to extend the validity of the Order for two years, pursuant to § 3130.6 of the Zoning Regulations. (Exhibit 68.) The Applicant served its extension request on the parties to the case, including the affected Advisory Neighborhood Commission ("ANC") 7B, and provided them the requisite 30 days in which to respond, pursuant to § 3130.6. The Applicant also served the request on the Office of Planning ("OP").

ANC 7B did not submit a report or otherwise respond to the extension request. OP filed a report recommending that the Board grant the Applicant's request based on the evidence provided by the Applicant, including the sworn affidavit of its Senior Vice President and Project Executive. OP's report indicated that the Applicant's attempts to finance the project were fruitless and that the challenging conditions were beyond the Applicant's reasonable control. (Exhibit 69.)

Through its affidavit, the Applicant stated that since the time of the Court's decision on August 25, 2011, it actively sought to develop the project and analyzed different options for proceeding. However, the lingering effects of the global recession rendered those efforts unsuccessful. The Applicant stated that lenders have been unwilling to finance the project due to the fragile state of the real estate market in Ward 7 of the District. Wards 1, 2, 3, and 6 have had strong recoveries due to a stable office and retail base, employment opportunities, public schools, university and institutions, and multi-modal transportation options, all of which have helped support the residential real estate market. The Applicant stated that, even though Ward 7 has attractive residential communities, its recovery has lagged without all of these other elements to help support it. Westfield, one of the Applicant's principal investors over the last 17 years, could not

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provide the equity required for the project. The Applicant stated that it had also marketed the project to other investors and developers, but minimal responses were received, which further demonstrated that weak market. Financing and investment difficulties have further been exacerbated by the high development costs associated with this particular development, according to the Applicant. As the Board noted in its Order, the site has extremely steep topography that adds significant costs to the project. (Exhibit 68, Tab B.)

On September 17, 2013, the Board convened a public meeting to consider the Applicant's request to extend the validity of the Order for two years. The Board concluded that the Applicant had met its burden of proof and granted the extension request.

Subsection 3130.6 of the Zoning Regulations states in full:

- 3130.6 The Board may extend 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.

The Board found that the Applicant met the criteria set for in § 3130.6. The motion for a time extension was served on all the parties to the applicant and those parties were given 30 days in which to respond, as required under paragraph (a). The Applicant's inability to secure the necessary financing and the poor economic conditions, particularly in the Ward 7 sub-market,

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during the period in question constitute "good cause" for the extension under paragraph (c)(1). As noted by the Applicant in its request, there have been no substantial changes in any of the material facts upon which the Board based its original approval. (11 DCMR § 3130.6(b).)

Neither the ANC nor any party to the extension request objected to an extension of the Order. The Board concluded that the extension of the Order is appropriate under the circumstances and criteria set forth above.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirements of 11 DCMR § 3125.3, which required that the order of the Board be accompanied by findings of fact and conclusions of law. Pursuant to 11 DCMR § 3130, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of Case No. 17837-B for a two-year time extension of Order No. 17837, which Order shall be valid until **August 25, 2015**, within which time the Applicant must file plans for the proposed development with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

VOTE: 4-0-1 (Lloyd J. Jordan, Michael G. Turnbull, S. Kathryn Allen, and Jeffrey L. Hinkle to approve; the third mayoral appointee vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: September 20, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOADR SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.