

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 17913-A of Application of Gonzaga College High School, Motion for a Two-Year Extension of BZA Order No. 17913, pursuant to 11 DCMR § 3130. The original application was pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception to construct new facilities for academic and athletic uses, to construct a below-grade garage and to make other related modifications to the campus under section 206, and for a variance from the court requirements under section 406, in the R-4, C-2-A, and C-3-C Districts at premises 19 I Street, N.W. (Square 622, Lots 90 and 840).

HEARING DATE (Orig. Application): April 28, 2009
DECISION DATE (Orig. Application): April 28, 2009
FINAL ORDER ISSUANCE DATE (Order No. 17913): May 4, 2009
DECISION ON MOTION TO EXTEND ORDER: May 17, 2011

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17913

The Underlying BZA Order

On April 28, 2009, the Board of Zoning Adjustment (“Board” or “BZA”) approved the Applicant’s request for a special exception to construct new facilities for academic and athletic uses, to construct a below-grade garage and to make other related modifications to the campus under § 206, and for a variance from the court requirements under § 406, in the R-4, C-2-A, and C-3-C Districts at premises 19 I Street, N.W. (Square 622, Lots 90 and 840). The Board’s decision to grant the relief was memorialized through Order No. 17913 (the “Order”), which was filed in the record and served on the parties on May 4, 2009, and therefore became “final” on that date, pursuant to 11 DCMR § 3125.5. (Exhibit 32.)

Under the Order, and pursuant to § 3130.1 of the Zoning Regulations, the Order was valid for two years from the time it became final, that is, until May 4, 2011, during which time the approved plans had to be filed for the purposes of obtaining a building permit.

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Motion to Extend

On April 1, 2011, the Board received a letter, dated April 1, 2011, from the Applicant, which requested, pursuant to 11 DCMR § 3130.6, a two-year extension in the validity of Order No. 17913. (Exhibit 34.)

The Applicant is requesting a two-year extension because, due to the deterioration of the current economic climate and uncertainty in market conditions, the Applicant has been unable to secure project funding and to proceed with its building permit application for the project. To meet its burden of proof, the Applicant submitted a letter attached to its request for extension, signed by the Applicant's current president, Rev. Joseph E. Ligan, S.J., who indicated that the Applicant has been unable to obtain the necessary funding to begin construction of the project because of circumstances beyond its control and despite its good faith efforts. The Applicant noted that it is heavily reliant on donations to fund the project and the economic downturn has had a negative impact on such donations and other sources of payment for the project, as well as that a larger percentage of its students require financial aid, resulting in project funding becoming more complicated. Further, the Applicant indicated that the Applicant's previous president and the project's original project manager, Father Allen P. Novotny, S.J. passed away after the Order was issued and that allowing the Order to lapse would further delay the redevelopment effort. (Exhibit 34, Exhibit B.)

Despite these difficulties, the Applicant, in its president's letter, indicated that it has been diligently proceeding in good faith with the project as approved in the Order. The Applicant stated that it had produced construction drawings and applied for several building permits related to the project in Fall 2010, as well as having spent approximately \$1,372,877 since the Order was issued on the project. However, due to market conditions beyond the Applicant's control which has curtailed donations, the Applicant has not been able to obtain sufficient funding to proceed with the project. (Exhibit 34, Exhibit B.)

The Office of Planning ("OP"), by memorandum dated May 10, 2011, recommended approval of the requested extension. (Exhibit 36.) The project is within the boundaries of ANC 6C. ANC 6C filed a report, dated May 16, 2011, indicating that at a duly noticed, regularly scheduled, public meeting of the ANC on May 11, 2011, at which a quorum of seven of nine commissioners was present, the ANC voted unanimously, 7-0, to support the Applicant's request as presented. (Exhibit 37.)

According to the Applicant, the reasons for its request to the Board to extend the time of BZA Order No. 17913 are because of its inability to secure financing in an unstable economic market and market conditions in the District, resulting in curtailed donations to fund the project. The extension would allow the Applicant the additional time in which to secure financing and building permits. 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.

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The Merits of the Request to Extend

Subsection 3130.6 of the Board's Rules of Practice and Procedure, Chapter 31 of Title 11 DCMR, 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 finds that the Applicant has met the procedural and substantive requirements 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 president's letter offered substantial evidence of the Applicant's inability to obtain sufficient

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project financing due to economic and market conditions beyond the Applicant's reasonable control, thereby demonstrating "good cause" as required under § 3130.6(c)(1).¹

The Applicant also satisfied § 3130.6(b)'s requirement that there be 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 did not also request a modification to the plans approved by the Board in Order No. 17913. There have been no changes to the Zone District classifications applicable to the property or to the Comprehensive Plan affecting this site since the issuance of the Board's Order.

Finally, ANC 6C, which was the other party to the case, supported the extension. The Board concludes that the extension of the Order is appropriate under the current circumstances.

It is therefore **ORDERED** that this request for extension of time be **GRANTED**, and that Order No. 17913 shall be valid for a period that will end on May 4, 2013, unless, within such period, plans are filed for the purpose of securing a building permit.

VOTE: 4-0-1 (Nicole C. Sorg, Lloyd J. Jordan, Jeffrey L. Hinkle, and Peter G. May to Grant; Meredith H. Moldenhauer not participating.)

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: JUN 07 2011

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.

¹ During its deliberations, the Board discussed whether the Applicant's president's letter would be sufficient to establish the "good cause" required under § 3130.6(c) or whether an affidavit was necessary. Although the Board acknowledged that in most cases it would require an affidavit to establish "good cause" under § 3130.6(c), in this particular case, the Board found that the Applicant's president's letter met the "good cause" requirements, because the Applicant is a private school that is relying on donations for its funding of the project and not the standard kinds of financing as in most other applications.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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JUN 07 2011

As Director of the Office of Zoning, I hereby certify and attest that on _____, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, or delivered by electronic mail in the case of those ANCs and SMDs that have opted to receive notices thusly, 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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ATTESTED BY:


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