

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Order No. 18002-A of Application of Gould Property Company, Motion for a Two-Year Extension of BZA Order No. 18002, pursuant to 11 DCMR § 3130.** The original amended application was pursuant to 11 DCMR §§ 3104.1 and 3103.1 for (1) a special exception under subsections 777.1 and 411.11 for relief from the requirements of subsections 411.3, 411.4, and 411.5, to allow two separate rooftop enclosures of varying heights, (2) a special exception under subsection 2202.2 for relief from the requirements of subsections 2204.9 and 2201.5, to allow a non-dedicated service and delivery space, and (3) a variance from the requirements of subsections 777.1, 411.2, and 400.7(c), to allow elevator penthouses with a maximum height of 22 feet 6 inches, to allow the construction of a new office building with ground floor retail in the DD/C-3-C District (and Downtown Urban Renewal Area) at premises 900 New York Avenue, N.W. (Square 374, Lot 45).

<b>HEARING DATE (Orig. Application):</b>	December 1, 2009
<b>DECISION DATE (Orig. Application):</b>	December 8, 2009
<b>FINAL ORDER ISSUANCE DATE (Order No. 18002):</b>	January 19, 2010
<b>DECISION ON MOTION TO EXTEND ORDER:</b>	February 7, 2012

**ORDER ON MOTION TO EXTEND**  
**THE VALIDITY OF BZA ORDER NO. 18002**

**The Underlying BZA Order**

On December 8, 2009, the Board of Zoning Adjustment (“Board” or “BZA”) approved the Applicant’s request for a special exception to allow two separate rooftop enclosures of varying heights under subsections 777.1 and 411.11 with relief from the requirements of subsections 411.3, 411.4, and 411; a special exception under subsection 2202.2 for relief from the requirements of subsections 2204.9 and 2201.5, to allow a non-dedicated service and delivery space, and a variance from the requirements of subsections 777.1, 411.2, and 400.7(c), to allow elevator penthouses with a maximum height of 22 feet 6 inches, to allow the construction of a new office building with ground floor retail in the DD/C-3-C District (and Downtown Urban Renewal Area) at premises 900 New York Avenue, N.W. (Square 374, Lot 45). The Board’s decision to grant the relief was memorialized through Order No. 18002 (the “Order”), which was

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filed in the record and served on the parties on January 19, 2010, 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 January 19, 2012, during which time the approved plans had to be filed for the purpose of obtaining a building permit.

**Motion to Extend**

On December 13, 2011, the Board received a letter from the Applicant, dated December 12, 2011, which requested, pursuant to 11 DCMR § 3130.6, a two-year extension in the validity of Order No. 18002. (Exhibit 39.) 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 Applicant’s motion, at Exhibit 39 of the record, addressed how the test for granting the motion is met. The Applicant’s arguments are presented below.

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**Service on Parties**

Pursuant to § 3130.6(a), on December 13, 2011, the Applicant's filing was served on the D.C. Office of Planning ("OP") as well as Advisory Neighborhood Commission ("ANC") 2F Chairman and Single Member District Commissioner 2F06. ANC 2F is the only party to the application. (Exhibit 39, Certificate of Service.)

**No Substantial Change of Material Facts**

The Applicant stated that there has been no substantial change of material facts since the BZA's approval of the application in 2010 that would undermine the Board's justification for approving the original application. It was noted that the subject property, the Zone District, the Comprehensive Plan and the Zoning Regulations have not undergone any changes that would impact the BZA's previous decision. The Applicant noted that "while construction has started on the CityCenter project, which is adjacent to the [subject] property, that construction has no material impact on the BZA's justification for approving the original application." (Exhibit 39 at 3.)

**Good Cause Shown**

**Problems Obtaining Financing and the Need for a Tenant**

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 to proceed with its building permit application for the project. To meet its burden of proof, the Applicant noted the large size of the building - approximately 600,000 square feet of retail and office space - and stated that it has tried to secure financing, but "[f]or an office building of this size, all potential lenders will require evidence of a significant pre-lease of space in the building before they will agree to provide financing for such a project. In discussions with potential large tenants, [the Applicant realized that] it would be imperative for the Applicant to be able to say that all of the entitlements are in place in order to move forward with construction of the project." (Exhibit 39 at 3.) The Applicant further noted, "Unfortunately this project was conceived and brought to market in 2008, right as the national economy and local real estate market crashed. After the demise of Lehman Brothers (and a number of projects which Lehman financed), financing for large, speculative office building projects evaporated, especially for a project of the size and cost of 900 New York Avenue." (Exhibit 39 at 3.)

Over the last three years, the Applicant's efforts to market the project to all of the large law firms in D.C., whose leases are expiring in the 2013-2017 timeframe, has produced the following result: Two were moving (one in the year 2012, the other in 2013); two were remaining at their existing location; and two were still evaluating their options. The Applicant has yet to secure a pre-lease tenant, and this has worked against securing financing. (Exhibit 39 at 3.)

Impact of Project Size and Construction Costs

In conjunction with the efforts to market and lease the property, the Applicant has been pursuing project financing – both equity and debt. The Applicant noted that:

The sheer size and cost of the project also limits the universe of potential lenders and investors. Working directly but also through its mortgage broker, Property Capital, the Applicant has met with some of the most active traditional lenders such as Capital One, TD Bank and Wells Fargo – all of whom have commercial real estate loans in the market today. In addition, the Applicant has had, and continues to have, discussions with institutional investors such as Northwestern Mutual and Pacific Life who are capable of providing debt and/or additional equity financing. The Applicant has also had numerous discussions with negotiations with domestic and international private real estate investment funds/firms such as Normandy Real Estate Partners and Curator, LLC, as well as with publicly traded real estate companies such as Vornado, Boston properties and Brookfield Properties. While these various investment firms are interested in investing in this project, none of these entities have shown interest in investing in the project immediately and proceeding with the project until a significant prelease tenant is obtained, a tenant seeking at least 50% of the building or 300,000 square feet. The Applicant has found that no bank is interested in financing a speculative development project.

(Exhibit 39 at 4.)

The Applicant pointed out that in addition to the size of the building, the cost of construction also impacts the ability to secure financing. Regarding these costs the Applicant stated that the project at:

900 New York Avenue is designed to world-class standards and will be very expensive to construct. This site is subject to the Master Plan Design Guidelines associated with the redevelopment of the old convention center site. The master plan imposes certain site and development constraints and also demands the highest quality architecture. As a result, the construction costs alone associated with this project will exceed \$150 million. Therefore, the rents the Applicant will need to obtain will be top of the market. This severely limits the universe of potential tenants (principally national and international law firms) for this project.

(Exhibit 39 at 3.)

In spite of the downturn in the market, the Applicant stated that:

Gould Property Company, the sponsor and sole owner of Square 374, LLC, is fully committed to moving forward with this project at the earliest possible time. Gould Property Company has an extraordinary amount of equity invested in the

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land (the assessed value is \$87.8 million). In addition to its investment in the land, the Applicant has spent \$6,349,000 through October 31, 2011 on site preparation, design, permits legal and entitlement costs, marketing and leasing costs, and real estate taxes which are \$1,618 per year. (citation omitted.) Moreover, the Applicant is moving forward with the filing of sheeting and shoring permit plans, which are expected to be filed with [the {DCRA}] by the middle of December 2011.

(Exhibit 39 at 4.)

**The Office of Planning & Advisory Neighborhood Commission**

By memorandum dated January 31, 2012, OP summarized the Applicant's efforts related to proceeding with the project and noted the economic condition affecting the ability of the Applicant to move forward. Finally, OP recommended approval of the requested extension. (Exhibit 40.)

The project is within the boundaries of ANC 2F. ANC 2F did not file a report related to the motion to extend.

**CONCLUSIONS**

**The Merits of the Request to Extend**

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 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. 18002. 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. The Applicant's statement offered substantial evidence of the Applicant's inability to obtain sufficient 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).

The Board notes that OP is in support of the extension and the ANC has not expressed a position related to the motion to extend.

In light of the foregoing, the Board concludes that the extension of the Order is appropriate under the current circumstances.

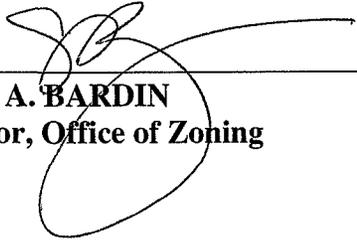
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Pursuant to 11 DCMR § 3130, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of Case No. 18002-A for a two-year time extension of Order No. 18002 which Order shall be valid until **January 19, 2014**, within which time the Applicant must file plans for the proposed structure with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

**VOTE: 4-0-1** (Meridith H. Moldenhauer, Jeffrey L. Hinkle, Nicole C. Sorg, and Lloyd J. Jordan to Approve; No Zoning Commission member 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: \_\_\_\_\_

  
**SARA A. BARDIN**  
Director, Office of Zoning

**FINAL DATE OF ORDER:**           **FEB 29 2012**          

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Zoning Adjustment



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As Director of the Office of Zoning, I hereby certify and attest that on FEB 29 2012, 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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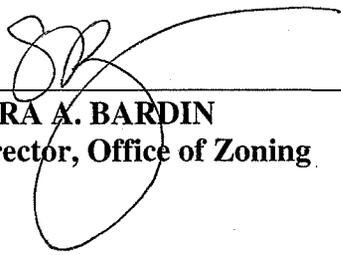
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ATTESTED BY: \_\_\_\_\_

  
SARA A. BARDIN  
Director, Office of Zoning

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