

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18064-B of HAI Real Estate Holdings LLC, Motion for a Second Two-Year Extension of BZA Order No. 18064, pursuant to 11 DCMR § 3130.

The original application was pursuant to 11 DCMR § 3104.1, for a special exception from the rear yard requirements under subsection 774.5, and a special exception from the parking requirements under subsection 2120.6, to allow an addition to an existing office building in the DC/C-3-C District at premises 1820-1822 Jefferson Place, N.W. (Square 139, Lot 75).

HEARING DATE (Orig. Application):	May 18, 2010
DECISION DATE (Orig. Application):	May 18, 2010
FINAL ORDER ISSUANCE DATE (No. 18064):	May 21, 2010
DECISION ON 1ST MOTION TO EXTEND ORDER:	July 10, 2012, July 31, 2012, and September 25, 2012
ISSUANCE DATE OF 1ST EXTENSION ORDER (No. 18064-A):	October 10, 2012
DECISION ON 2ND MOTION TO EXTEND ORDER:	July 8, 2014

**ORDER ON 2nd MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 18064**

The Underlying BZA Order

On May 18, 2010, the Board of Zoning Adjustment (the “Board” or “BZA”) approved the Applicant’s request for special exceptions from the rear yard requirements under § 774.5 and the parking requirements under § 2120.6, to allow an addition to an existing office building in the DC/C-3-C District. Thus, pursuant to 11 DCMR § 3104.1, the Board granted special exceptions under §§ 774.5 and 2120.6 to permit the construction of an addition to an existing office building in the DC/C-3-C District at premises 1820-1822 Jefferson Place, N.W. (Square 139, Lot 75). Order No. 18064 (the “Order”) was issued May 21, 2010. (Exhibit 29.)

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Under the Order, and pursuant to § 3130.1¹ of the Zoning Regulations, the Order was valid for two years from the time it was issued – until May 21, 2012.

1st Motion to Extend

On May 21, 2012, the Board received a letter from the Applicant's attorney, which requested, pursuant to 11 DCMR § 3130.6,² a two-year extension in the authority granted in the underlying BZA Order, which was then due to expire on May 21, 2012. The Applicant's letter also contained a request to waive § 3130.9 of the Zoning Regulations to accept the Applicant's time extension motion, which was filed less than 30 days prior to the expiration of the underlying Order so as to toll that Order's expiration.³ The Applicant also filed supplemental information on July 26, 2012 (Exhibit 34) and September 14, 2012 (Exhibit 37), to meet the good cause requirements of 11 DCMR § 3130.6. The Applicant served its extension request and supplemental information on Advisory Neighborhood Commission ("ANC") 2B, which is the affected ANC and the only other party to the case, and to the Office of Planning ("OP"). (Exhibits 31, 34, and 37.)

ANC 2B filed a letter report in support of the request for an extension. (Exhibit 32.) OP filed a report recommending that the Board grant the Applicant's request for a two-year extension of Order No. 18064. (Exhibit 33.)

The Applicant's submissions provided evidence of good cause for the time extension that was required by § 3130.6. The Applicant's time extension motion was put on the Board's July 10, 2012 decision meeting agenda, but the Applicant requested that the Board defer consideration of the extension request until the Board's July 31st special meeting. (Exhibit 34.) The Board granted the request for postponement of the extension decision to July 31, 2012 and allowed the

¹ Subsection 3130.1 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.)

² Subsection 3130.6 was adopted by the Zoning Commission in Z.C. Case No. 09-01 and became effective on June 5, 2009.

³ Subsequent to the first time extension request, on February 25, 2013, the Zoning Commission took final action to approve Z.C. Order No. 12-11 (text amendments to the BZA Rules and Procedures – Chapter 31). The amendments became effective on June 14, 2013, when the Order was published in the *D.C. Register*. With respect to time extensions to the validity of orders, the text amendments eliminated the prior limitation to granting more than one time extension (§ 3130.6) and eliminated the 30-day rule for filing before the expiration date of an order (§ 3130.9).

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Applicant to file supporting documentation related to the requirements of § 3130.6. On July 31, 2012, the Board convened the case for deliberation at its public decision meeting, but then rescheduled its decision for September 25, 2012, and allowed the Applicant to submit additional supplemental information focused on the Applicant's attempts to secure financing to meet the "good cause" requirements of § 3130.6. On September 14, 2012, the Applicant submitted additional supplemental information documenting the Applicant's difficulties in securing leases and financing for the project to demonstrate good cause for granting the two-year extension of the Board's prior approval. (Exhibit 37.)

At its decision meeting on September 25, 2012, the Board found that the requirements of 11 DCMR § 3130.6 had been met and granted the Applicant the two-year extension of BZA Order No. 18064 until May 21, 2014. The first extension order, Order No. 18064-A was issued on October 10, 2013. (Exhibit 39.)

2nd Motion to Extend

On April 21, 2014, pursuant to 11 DCMR § 3130.6, the Applicant filed another request for a two-year extension of the validity of Order No. 18064, which was due to expire on May 21, 2014. (Exhibit 41.)

This request for extension is pursuant to § 3130.6 of the Zoning Regulations, which permits the Board to "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...". The Applicant served its latest extension request and supplemental information on Advisory Neighborhood Commission ("ANC") 2B, which is the affected ANC and the only other party to the case, and to the Office of Planning ("OP"). (Exhibits 41.)

ANC 2B submitted a letter, dated June 16, 2014, in support of the time extension. The ANC report indicated that at its regular meeting on June 11, 2014, at which a quorum of commissioners were present, the ANC unanimously voted to support the time extension request by a vote of 7-0. (Exhibit 43.)

The Office of Planning ("OP") filed a report, dated July 1, 2014, in support of the request for the time extension. (Exhibit 44.)

According to the Applicant, the main reason for the request to extend the validity of the order is because of the additional time needed to secure a loan and complete the sale of the property and obtain building permits. As outlined in the Applicant's motion and supporting documentation, in the time since the first time extension, the Applicant entered into a lease and a contract to purchase the property with its current tenant, and it now needs the extension of time to allow the purchase agreement to be completed and for securing a Small Business Administration ("SBA") loan and for time to file for a building permit. The Applicant provided documentation of the existing lease and pending sale of the property to the lessee by August 31, 2014. The Applicant

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indicated that it had been necessary to pre-lease the project to enable either the Applicant or a prospective purchaser to secure financing for the proposed addition to the existing office building. The Applicant stated that the SBA has taken longer to process the prospective purchaser's loan, which in turn delayed closing on the purchase of the property and completing the work needed for the filing of building permits. Granting the time extension would allow the Applicant and its proposed purchaser time to complete this process and to finalize plans for filing for building permits. For the above reasons, the Applicant is requesting a two-year time extension based on demonstrated good cause to extend the validity of the order. (Exhibit 41.)

According to the Applicant, the reasons for its request to the Board to extend Order No. 18064 for another two years are because of the delay in obtaining an SBA loan so as to close on the purchase of the property and file for building permits. To show good cause for a time extension of the Order, the Applicant's April 21st filing included supporting documentation, starting with a May 18, 2012 letter from the real estate services company retained to market the property for the purposes of preleasing and bringing in an equity partner or selling the property. The real estate firm's letter indicated that the property had been listed for approximately 12 months and the Applicant had received three offers, two of which were in negotiations. The real estate firm's letter emphasized that both negotiations depended on keeping intact the already-granted zoning relief and noted that if the approval were to expire, the property's value would be negatively impacted, thus necessitating extension of the Board's approval. (Exhibit 41, Tab C.)

The Applicant's supporting documentation also included an executed Commercial Lease Agreement with the Applicant and its current tenant (and proposed purchaser) of the property (Exhibit 41, Tab D), as well as the Ninth Amendment to the Purchase and Sale Agreement between the Applicant and its current tenant, which sets a closing date of on or before August 31, 2014. (Exhibit 41, Tab E.)

The Applicant stated that the plans approved for the development of the site and other material facts are unchanged from those approved by the Board in its Order issued on May 21, 2010. Also, there have been no changes to the Zone District classification or the Comprehensive Plan applicable to the property. The extension would allow the Applicant the necessary additional time in which to secure the SBA loan, close the purchase, and file for building permits. 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 or any subsequent purchaser of the property the additional time to secure financing, complete the sale of the property, and apply for a building permit.

At its decision meeting on July 8, 2014, the Board reviewed the Applicant's motion and documentation and found that the requirements of 11 DCMR § 3130.6 had been met and granted the Applicant a second two-year extension of BZA Order No. 18064 until May 21, 2016.

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The Zoning Commission adopted 11 DCMR § 3130.6 in Zoning Commission Case No. 09-01. The Subsection became effective on June 5, 2009.

Subsection 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.)

Also, on February 25, 2013, the Zoning Commission approved Z.C. Order No. 12-11, which included text amendments to the BZA Rules and Procedures – Chapter 31. These text amendments became effective on June 14, 2013, when the Order was published in the *D.C. Register*. With respect to time extensions to the validity of orders, the text amendments eliminated the prior limitation to granting more than one time extension (§ 3130.6) and eliminated the 30-day rule for filing before the expiration date of an order (§ 3130.9). Thus, the motion for a second time extension is permissible under the regulations.

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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 complete the sale of the property and file for building permits due to the condition of the real estate market and the SBA's processes 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 May 21, 2010 (Exhibit No. 25 in the record). 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 original 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.

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. Pursuant to 11 DCMR § 3130, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of Case No. 18064-B for a two-year time extension of Order No. 18064, which Order shall be valid until **May 21, 2016**, 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: 5-0-0 (Lloyd J. Jordan, S. Kathryn Allen, Marnique Y. Heath, Jeffrey L. Hinkle, and Peter G. May to Approve.)

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: July 9, 2014

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.