

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18291-A of Mount Olive Baptist Church, pursuant to 11 DCMR § 3130, for a two-year extension of BZA Order No. 18291.

The original application was pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, a variance from the nonconforming structure provisions under subsection 2001.3, and a variance from the off-street parking requirements under subsection 2101.1, to construct an addition to an existing church structure in the R-4 District, at premises 1140 6th Street, N.E. (Square 829, Lot 65).

HEARING DATE (Original Application):	January 17, 2012
DECISION DATE (Original Application):	February 7, 2012
FINAL ORDER ISSUANCE DATE (Order No. 18291):	February 17, 2012
DECISION ON 1ST EXTENSION OF ORDER DATE:	March 4, 2014, April 1, 2014, and April 8, 2014

SUMMARY ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 18291

The Underlying BZA Order

On February 7, 2012, the Board of Zoning Adjustment (the "Board") approved the Applicant's request for variances from the lot occupancy requirements under § 403, from the rear yard requirements under § 404, from the nonconforming structure provisions under § 2001.3, and from the off-street parking requirements under § 2101.1, to construct an addition to an existing church structure in the R-4 District, at premises 1140 6th Street, N.E. (Square 829, Lot 65) (the "Site"). The Board issued its written order ("Order") on February 17, 2012. Pursuant to 11 DCMR §§ 3125.6 and 3125.9, the Order became final on February 17, 2012 and took effect 10 days later.

Under the Order and pursuant to § 3130.1 of the Zoning Regulations, the Order was valid for two years from the time it was issued -- until February 17, 2014.

Subsection 3130.1 states:

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No order 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.)

Motion to Extend Validity of the Order Pursuant to 11 DCMR § 3130.6

On January 6, 2014, the Applicant sent a letter and motion request to the Board that requested, pursuant to 11 DCMR § 3130.6, a two-year extension of Order No. 18291, which was due to expire on February 17, 2014. 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...” Moreover, the Applicant “...served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond”, pursuant to § 3130.6(a).

The Applicant submitted a statement and a supplemental statement indicating that the reasons for the request to extend the validity of the order are based on the Applicant’s inability to secure the necessary funding and financing for the project, despite diligently pursuing such financing. The Applicant indicated in its first statement that due to current economic conditions, the Applicant had experienced a lower amount of member donations and that it had been told by several lenders that tougher lending restrictions are currently preventing these lenders from financing the project. (Exhibit 44.) On March 4, 2014, the Board convened a Public Decision Meeting on Application 18291-A. During those deliberations, the Board requested more supporting documentation regarding the Applicant’s efforts to obtain financing from lending institutions in order to make a showing of good cause for a time extension. The Board also rescheduled its decision for April 1, 2014 and subsequently rescheduled the April 1st meeting for April 8th.

The Applicant submitted the requested additional supporting information in its filing of March 25, 2014, wherein the Applicant provided a sworn affidavit from the Applicant’s Deacon and Trustee who described two major events that had severely and adversely impacted the Applicant’s ability to secure financing and commence construction. The Deacon’s affidavit stated that he was the person now responsible for overseeing the project and that there is no substantial change in any of the material facts on which the Board based its original approval of the Application. The affidavit described the difficulty the Applicant had in obtaining financing for the project, because of the break in its relationship with its general contractor and the eventual dismissal of that contractor. The Applicant severed ties with the contractor to whom it had paid a majority of the Applicant’s equity funds after learning that the contractor was in bankruptcy. According to the affidavit, the contractor had failed to disclose that it was in bankruptcy. Since all the consultants on the project, including architects and legal counsel, had been hired by the now-bankrupt contractor, the Deacon indicated that after severing ties with the contractor, the Applicant’s project was set “back to square one, or worse.” Also, the affidavit stated that there were delays due to the unexpected retirement of the Applicant’s Pastor for

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health reasons, which left the project in limbo, as the Pastor had been the leading force and visionary behind the project. (Exhibit 46.) For the above reasons submitted, the Applicant is requesting a two-year time extension based on demonstrated good cause to extend the validity of the Order.

Criteria for Evaluating Motion to Extend

Subsection 3130.6 of the Zoning Regulations authorizes the Board to extend the time periods for good cause provided: (i) the extension request is served on all parties to the application by the applicant, and all parties are allowed 30 days in which to respond; (ii) there is no substantial change in any of the material facts upon which the Board based its original approval; and (iii) the applicant demonstrates there is good cause for such extension. Pursuant to 11 DCMR § 3130.6(c)(1), good cause is established through the showing of 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 Merits of the Request to Extend the Validity of the Order Pursuant to 11 DCMR § 3130.6

The Board finds that the motion has met the criteria of § 3130.6 to extend the validity of the underlying order. To meet the burden of proof, the Applicant submitted an affidavit and other supporting documents and information that described its efforts and difficulties in obtaining financing and commencing construction. Since the Board issued Order No. 18291 in February of 2012, the Applicant has been working diligently to secure the necessary funding and other approvals to move forward with the project approved by the Board. The Applicant attached a sworn, notarized affidavit from the Applicant's Deacon and Trustee (Exhibit 46) which described two major events that substantially delayed the project -- the Applicant's discovery of the general contractor's bankruptcy which resulted in the contractor's dismissal but not until after the Applicant had expended in fees paid to the contractor a large amount of its equity funds and the Pastor's unexpected retirement due to health reasons, where the Pastor had been the driving force and leader of the project. (Exhibit 46.)

In the affidavit, the Applicant further described what it has done thus far to recover from these two major adverse events. In October 2013, the Applicant hired a specialist in acquiring financing for non-profit entities and stated that it is hopeful that it will secure financing during 2014. The Applicant provided a letter from a bank indicating that financial institution's interest

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in funding the project. The Applicant also indicated that it had hired a new general contractor and that the project is currently on schedule with the anticipation that a building permit can be applied for some time in the next year. (Exhibit 46.)

Given the totality of the conditions and circumstances described above and in the affidavit and other supplemental information that was provided, the Board found that the Applicant satisfied the "good cause" required under the third prong of § 3130.6. Moreover, despite the challenges the Applicant described in its submissions for the extension, the Applicant demonstrated that it has acted diligently, prudently, and in good faith to proceed towards the implementation of the Order.

The Board found that the Applicant has met the criteria set forth in 11 DCMR § 3130.6. The reasons given by the Applicant were beyond the Applicant's reasonable control within the meaning of § 3130.6(c)(3) and constitute "good cause" required under § 3130.6(c)(1). In addition, as required by § 3130.6(b), the Applicant demonstrated that there is no substantial change in any of the material facts upon which the Board based its original approval in Order No. 18289. There have also been no changes to the Zone District classification applicable to the Site or to the Comprehensive Plan affecting the Site since the issuance of the Board's order.

The Office of Planning ("OP"), in its report dated January 28, 2014, reviewed the application for the extension of the Order for "good cause" pursuant to 11 DCMR § 3130.6 and recommended approval of the requested two-year extension. (Exhibit 42.) The Site is within the boundaries of Advisory Neighborhood Commission ("ANC") 6C. The ANC submitted a report dated February 18, 2014, that indicated that at a duly noticed, regularly scheduled monthly meeting of the ANC, with a quorum and the public present, the ANC voted 5:0:0 to support the request for an extension. (Exhibit 43.)

The motion for the 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). No party to the application objected to an extension of the Order. The Board concludes that extension of the relief is appropriate under the current circumstances.

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. 18291-A for a two-year time extension of Order No. 18291, which Order shall be valid until **February 17, 2016**, within which time the Applicant must file plans for the proposed project with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

VOTE: **3-0-2** (Jeffrey L. Hinkle, Marnique Y. Heath, and Lloyd J. Jordan, to APPROVE; S. Kathryn Allen and Marcie I. Cohen, not participating).

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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: April 10, 2014

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.