

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18413-A of Marcus A. Watkins, pursuant to 11 DCMR § 3130, for a two-year extension of BZA Order No. 18413.

The original application was pursuant to 11 DCMR § 3103.2, for a variance from the lot area and lot width requirements under subsection 401.3, to allow the subdivision and construction of two new flats (two-family dwellings) in the R-4 District, at premises 257 Warren Street, N.E. (Square 1033, Lots 135, 136, and 137).

HEARING DATE (Original Application):	November 27, 2012
DECISION DATE (Original Application):	November 27, 2012
FINAL ORDER ISSUANCE DATE (Order No. 18413):	November 29, 2012
DECISION DATE ON EXTENSION OF ORDER:	December 2, 2014

SUMMARY ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 18413

The Underlying BZA Order

On November 27, 2012, the Board of Zoning Adjustment (the "Board") approved the Applicant's request for a variance from the lot area and lot width requirements under § 401.3, to allow the consolidation of three legally nonconforming lots into two lots for the purpose of constructing two flats (two-family dwellings) in the R-4 District at premises 257 Warren Street, N.E. (Square 1033, Lots 135, 136, and 137) (the "Site"). The Applicant sought the variance in order to allow the subdivision and construction of two new flats (two-family dwellings) in the R-4 District. The Application, which was unopposed, was granted on November 27, 2012, and the Board issued its written order ("Order") on November 29, 2012. Pursuant to 11 DCMR §§ 3125.6 and 3125.9, the Order became final on November 29, 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 November 29, 2014.

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Subsection 3130.1 states:

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 October 28, 2014, the Applicant sent a letter with a motion request to the Board, pursuant to 11 DCMR § 3130.6, for a two-year extension of Order No. 18413, which was due to expire on November 29, 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 were allowed 30 days to respond, pursuant to § 3130.6(a).

To establish good cause for the request, the Applicant submitted a letter dated October 28, 2014, that stated the reasons the Applicant was requesting a time extension. The Applicant cited two factors beyond his control that prevented him from moving forward with the project. The first was that his job was temporarily transferred to Los Angeles, California, making it difficult for him to apply for permits, and the second was that he was diagnosed with serious health issues for which he is still under treatment. The combination of these two issues prevented the Applicant from being able to apply for the necessary permits and file the necessary construction plans in a timely manner. The Applicant submitted several exhibits demonstrating the factors beyond his control, including a letter from his doctor describing the treatment he was given and a memorandum from his employer approving his temporary reassignment of his duty station. (Exhibit 1 in Case No. 18413A, Exhibit 36 in Case No. 18413.) The Applicant stated that he requested a two-year extension of the Order because of circumstances beyond his control which prevented him from obtaining his permits and vesting the Order for the reasons described. 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 §

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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 a letter and supporting documents and information that described the two factors beyond his control that prevented him from moving forward with the project: his job was temporarily transferred to Los Angeles and he was diagnosed with serious health issues for which he is still receiving treatment. Since the Board issued Order No. 18413 in November of 2012, the Applicant has been working diligently to secure the necessary commitments and other approvals to move forward with the project approved by the Board. In addition to the letter signed by the Applicant, the Applicant submitted letters from his physician and his employer attesting to his health and job issues, issues which in combination prevented him from being able to apply for the necessary permits and file the necessary construction plans in a timely manner. (Exhibit 1 in Case No. 18413A, Exhibit 36 in Case No. 18413.)

Given the totality of the conditions and circumstances described above in the Applicant's letter 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 his 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. 18413. 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.

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The Office of Planning ("OP"), in its report dated November 25, 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 3 in Case No. 18413A, Exhibit 38 in Case No. 18413.) The Site is within the boundaries of Advisory Neighborhood Commission ("ANC") 6A. The ANC did not submit a report with regard to the request for a time extension.

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. 18413-A for a two-year time extension of Order No. 18413, which Order shall be valid until **November 29, 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: **4-0-1** (Lloyd J. Jordan, Peter G. May, S. Kathryn Allen, and Jeffrey L. Hinkle, to APPROVE; Marnique Y. Heath, not present or 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. BYRDIN
Director, Office of Zoning

FINAL DATE OF ORDER: December 3, 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.