

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18511-A of Alleyoop LLC, pursuant to 11 DCMR § 3130, for a two-year extension of BZA Order No. 18511.

The original application was pursuant to 11 DCMR § 3103.2, for a variance from the use provisions under § 330.4, the alley lot height requirements (§ 2507), the nonconforming structure requirements (§ 2001), the lot area and width requirements (§ 401), rear yard requirements (§ 404), and side yard requirements (§ 405) to allow the Applicant to subdivide an alley lot into three separate lots and convert an existing automotive repair shop to an office use and two artist studios in the R-4 District at premises rear 1018 Irving Street, N.W. (Square 2851, Lot 837).

HEARING DATES (Original Application):	March 5 and April 2, 2013
DECISION DATES (Original Application):	April 30 and July 23, 2013
FINAL ORDER ISSUANCE DATE (Order No. 18511):	January 13, 2014
DECISION ON TIME EXTENSION:	January 26 and May 24, 2016 ¹

SUMMARY ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 18511

The Underlying BZA Order

On July 23, 2013, the Board of Zoning Adjustment (the "Board") approved the Applicant's request for variances from the use provisions under § 330.4, the alley lot height requirements under § 2507, the nonconforming structure requirements under § 2001, the lot area and width requirements under § 401, rear yard requirements under § 404, and side yard requirements under § 405, to allow the Applicant to subdivide an alley lot into three separate lots and convert an existing automotive repair shop to an office use and two artist studios in the R-4 District. The Board issued its written order ("Order") on January 13, 2014. Pursuant to 11 DCMR §§ 3125.6 and 3125.9, the Order became final on January 13, 2014 and took effect 10 days later.

¹ The request was first considered at the public meeting of January 26, 2016 and postponed to May 24, 2016.

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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 January 13, 2016.² (Exhibit 5.)

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

On January 7, 2016, the Applicant sent a letter requesting that the Board grant a two-year extension of Order No. 18511. 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.

On March 9, 2016, the Board received a party status request in opposition from Frank Proschan. (Exhibit 10.) The Board denied the request at its public meeting on May 24, 2016, noting that the regulations provide that party status requests are to be considered at the time of the hearing on an application and that Mr. Proschan did not request party status to the underlying hearing proceedings for Application No. 18511.

Criteria for Evaluating Motion to Extend

Pursuant to § 3130.6(a), the Applicant shall serve on all parties to the application and all parties shall be allowed 30 days to respond. The record reflects that the Applicant served all parties at least 30 days in advance of the public meeting. The parties to the original application included the affected Advisory Neighborhood Commission (“ANC”) which is ANC 1A and Adetokunbo Ladejobi, party in opposition. The extension request also was submitted to the Office of Planning (“OP”). (Exhibit 6.)

Pursuant to § 3130.6(b), the Applicant indicated in its request that there has been no substantial change in any of the material facts upon which the Board based its original approval of the application. (Exhibit 6.)

Under § 3130.6(c), good cause for the extension must be demonstrated 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

² 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.

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pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

The Applicant submitted a letter arguing that it has encountered difficulties in finding tenants for the two artist studios, noting that the "demand for artist studios is relatively small" and that there is "good cause for the extension due to the inability to secure a tenant due to the current economic and market conditions." (Exhibit 6.) In advance of the public meeting on May 24, 2016, the Applicant submitted supplemental documentation to indicate that the property cannot be subdivided into lots and the development cannot move forward unless the D.C. Council passes a resolution to name the alley on which the site is located. (Exhibits 16 and 19.) Specifically, the Applicant identified new rules in the Building Code Supplement (11 DCMR 12A) that require every lot legally capable of supporting a building or structure to have an address and a related requirement that no street number shall be assigned to a premises that has as its only access only an unnamed street or alley. The Applicant notes that the alley upon which the property is located is in the process of being named, pursuant to D.C. Bill No. 21-421. During the public meeting, the Applicant also testified to provide further information about the current status of the project and about the filing of Application No. 18511-B, which requests variance and special exception relief to pursue alternative plans for the property.

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 requirements of § 3130.6(a), the record reflects that the Applicant served the parties to the application and all parties were allowed at least 30 days to respond. As a party to the proceedings, ANC 1A submitted a written report dated March 9, 2016 that indicated that at a regularly scheduled, duly noticed meeting of the ANC at which a quorum was present, it voted 8-2-0 to support the request for a time extension. (Exhibit 11.) No party to the application objected to an extension of the Order.

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. 18511. 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.

To meet the burden of proof for "good cause" required under § 3130.6(c), the Applicant provided supplemental information and testimony regarding its efforts to find tenants for its artist studios and the difficulties associated with subdividing the property located on a currently unnamed alley. (Exhibits 16 and 19.) Given the totality of the conditions and circumstances described above and in the supplemental information that was provided, the Board finds that the Applicant satisfied the "good cause" requirement under § 3130.6(c), specifically meeting the criteria for §§ 3130.6(c)(1) and 3130.6(c)(3). The Board finds that the delay in naming the alley is beyond the Applicant's reasonable control and that the Applicant demonstrated that it has acted diligently, prudently, and in good faith to proceed towards the implementation of the Order.

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OP, in its report dated January 19, 2016, reviewed the application for the extension of the Order for "good cause" pursuant to 11 DCMR § 3130.6, and noted that additional information would be required to support the Applicant's request. OP noted that, if the Applicant submitted a more robust indication of their efforts to lease the space as permitted, it would support the request. (Exhibit 8.) Having reviewed the Applicant's filings made after the submission of OP's January 19 report, and hearing the Applicant's testimony, OP testified at the public meeting on May 24, 2016 that it now supports the request to extend Order No. 18511. 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 § 3125.5, which requires 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. 18511-A for a two-year time extension of Order No. 18511, which Order shall be valid until **January 13, 2018**, 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: 5-0-0 (Marnique Y. Heath, Anthony J. Hood, Anita Butani D'Souza, Frederick L. Hill, and Jeffrey L. Hinkle, 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: June 8, 2016

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.