

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY, APRIL 13, 2010

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Meridith Moldenhauer, Madam Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH MOLDENHAUER Madam Chairperson
SHANE L. DETTMAN Vice Chairman
(NCPC)
NICOLE SORG Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Spec.
JOHN NYARKU Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

This transcript constitutes the minutes from the Special Public Meeting held on April 13, 2010.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

WELCOME:

Meridith Moldenhauer, Chair 3

ORDER NO. 17749/APPLICATION NO. 17749-A

ALTURAS REAL ESTATE INTEREST LLC: 5

Ex. 37 - Extension Request 5

Ex. 38 - OP Filing 6

Board Deliberation: 7

Motion to Approve Extension 9

Vote: 3-0-2 to Approve Extension 10

ORDER NO. 17753/APPLICATION NO. 17753-B

W STREET ACQUISITIONS LLC: 10

Ex. 43 - Extension Request 11

Ex. 44 - OP Filing 11

Grant Tolling of Time Period 12

Board Deliberation: 12

Motion to Approve Extension 15

Vote: 3-0-2 to Approve Extension 15

ORDER NO. 17721/APPLICATION NO. 17221-A

CAMDEN DEVELOPMENT, INC.: 16

Ex. 33 - Extension Request 17

Ex. 34 - OP Filing 17

Waive Rules/Accept OP Filing 18

Board Deliberation: 18

Motion to Approve Extension 20

Vote: 3-0-2 to Approve Extension 20

ADJOURN:

Meridith Moldenhauer, Chair 21

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1 P-R-O-C-E-E-D-I-N-G-S

2 9:55 a.m.

3 CHAIRPERSON MOLDENHAUER: This
4 meeting will, please, come to order. Good
5 morning, ladies and gentlemen. This is April
6 13, 2010 for a Special Public Meeting of the
7 Board of Zoning Adjustment for the District of
8 Columbia.

9 My name is Meridith Moldenhauer,
10 Chairperson. Joining me today is Vice Chair
11 Shane Dettman representing the National
12 Capital Planning Commission, Nicole Sorg,
13 Mayoral Appointee.

14 To her left is Clifford Moy,
15 Secretary of the Office of Zoning, Lori Monroe
16 from OAG and Ms. Beverley Bailey.

17 Copies of today's meeting agenda
18 are available to you and are located to my
19 left in the wall bin near the door. We do not
20 take any public testimony at our meeting,
21 unless the Board asks someone to come forward.

22 Please, be advised that this

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1 proceeding is being recorded by the Court
2 Reporter and is also webcast live.
3 Accordingly, we must ask you to refrain from
4 any disturbing noise or actions in the hearing
5 room.

6 Please, turn off all beepers and
7 cell phones.

8 Does the staff have any
9 preliminary matters?

10 MR. MOY: We do, Madam Chair, but
11 staff would suggest that we take that on a
12 case-by-case basis.

13 CHAIRPERSON MOLDENHAUER: Okay.
14 Thank you. Then should we read the first
15 case?

16 MR. MOY: Yes, Madam Chair. Good
17 morning, Madam Chair, Members of the Board.
18 There are three cases for decision at this
19 meeting, the Special Public Meeting. All
20 three cases are with the same genre, meaning
21 that they are all motions to extend the
22 validity of an existing order.

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1 The first is to Order No. 17749,
2 which would become 17749-A, of Alturas Real
3 Estate Interest LLC, pursuant to 11 DCMR 3130
4 of the Zoning Regulations.

5 The original application was
6 approved on May 6, 2008. That application was
7 to create a mixed-use residential and retail
8 development in the ARTS/C-3-A District at
9 premises 1625, 167-29 and 1631 14th Street,
10 N.W., Square 240, Lot 6, 812 and 819.

11 The original application was for
12 variance relief and special exception relief.

13 The applicant filed their request on February
14 17, 2010. And again, it was for a two year
15 extension of the effectiveness of the Order
16 17749. A copy is in your case folders
17 identified as Exhibit 37. The existing order
18 expires or would expire May 9, 2010.

19 The request, the applicant also
20 served on all parties pursuant to 3130.6(a).
21 There were no additional filings to the record
22 other than a filing from the Office of

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1 Planning on April 1, 2010 and it's identified
2 in your case folders as Exhibit 38.

3 Finally, the Board is to act on
4 the merits of the request to extend the
5 validity of the order pursuant to 3130.6 and
6 that completes the staff's briefing, Madam
7 Chair.

8 CHAIRPERSON MOLDENHAUER: Thank
9 you very much. I think before we go into the
10 deliberations, we actually will call, I see,
11 Kyrus Freeman in the audience. If you can
12 step forward, I have one quick question. If
13 you can introduce yourself on the record?

14 MR. FREEMAN: Good morning, Kyrus
15 Freeman, the Law Firm of Holland and Knight on
16 behalf of the applicant.

17 CHAIRPERSON MOLDENHAUER: The one
18 preliminary matter is that based on the
19 application, the original order, we just saw
20 that initially Pillsbury Shaw Pittman had been
21 counsel and we don't have a letter of
22 authorization showing the change of

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1 representation to Holland and Knight. Is that
2 something that you can provide for our
3 records?

4 MR. FREEMAN: Yes, I can provide
5 that today.

6 CHAIRPERSON MOLDENHAUER: Okay.

7 MR. FREEMAN: Before the end of
8 the day.

9 CHAIRPERSON MOLDENHAUER: Thank
10 you very much.

11 Seeing that that has been
12 resolved, I think what we can do is I'll turn
13 it over to Nikki Sorg and if you want to start
14 off with the deliberation, we will go from
15 there. Thank you.

16 MEMBER SORG: Thank you. So this
17 seems pretty straightforward. And, in fact,
18 several of the points that we go through in
19 looking to satisfy 3130.6 were actually
20 contained in the introduction.

21 So just to go very quickly, the
22 extension of this is Order 17749. The first

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1 criteria for showing good cause to extend the
2 order for two years is that all the filings in
3 this case and responses were filed timely to
4 the parties, which is only ANC-2F, is the only
5 party, and there were none in opposition to
6 the original application.

7 The second criteria that there is
8 no substantial change in the material facts on
9 which the original approval was based. There
10 has been no changes in the Zoning Regulations
11 or in the Comprehensive Plan or in the
12 surrounding development as well as no changes
13 in the plans with regard to the proposed
14 development.

15 Finally, the applicant has
16 demonstrated their inability to obtain project
17 financing. In this case, we have a letter
18 from Gimbert Associates, a commercial real
19 estate firm, that indicates that they have
20 since the order been searching for financing,
21 but have been unable to come to any reasonable
22 terms as of yet.

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1 And OP is recommending that we
2 grant the two year extension and I would urge
3 the same.

4 CHAIRPERSON MOLDENHAUER: Thank
5 you very much, Ms. Sorg. As you referenced,
6 the OP report, which recommends granting of
7 the two year extension, our Exhibit No. 38,
8 and, as you said, under the new regs we
9 require substantial evidence. And the
10 applicant's Exhibit No. B under their Exhibit
11 37 provides such to qualify for approval.

12 And so I'll turn to any other
13 Board Members to see if there is any
14 additional information. If not, then I will
15 call for a vote to approve Application 17749
16 for a two year extension.

17 All those in favor say aye.

18 I'm sorry, is there a second?
19 Thank you.

20 VICE CHAIRMAN DETTMAN: I'll
21 second the motion.

22 CHAIRPERSON MOLDENHAUER: The

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1 motion has been made and seconded.

2 All those in favor say aye.

3 ALL: Aye.

4 CHAIRPERSON MOLDENHAUER: Mr. Moy,
5 can you read back the vote?

6 MR. MOY: Yes, Madam Chair. The
7 staff would record the vote as 3-0-2. This is
8 on the motion of Chair, Ms. Moldenhauer, to
9 approve the request for a two year extension,
10 seconded by Vice Chair, Mr. Dettman, in
11 support of the motion Ms. Sorg. No other
12 Board Member or Zoning Commissioner
13 participating.

14 So again, the final vote is 3-0-1.

15 Would the Board desire waiving the regs for a
16 summary order?

17 CHAIRPERSON MOLDENHAUER: Yes, we
18 would. Thank you.

19 MR. MOY: The next case, again, is
20 another motion to extend the validity of the
21 Order, this is to, No. 17753, which would be
22 17753-B, of W Street Acquisitions LLC,

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1 pursuant to 11 DCMR 3130 of the Zoning
2 Regulations.

3 The original application was
4 approved on February 19, 2008, which permitted
5 -- which would permit the construction of a
6 new residential development in the R-4/C-3
7 District at premises 1226-1252 W Street, S.E.,
8 Square 5782, Lots 98, 99, 694, 810, 811, 812
9 and 1022.

10 The application for relief was for
11 multiple variance reliefs and a special
12 exception relief under section 2516.

13 On the 18th of February 2010, the
14 applicant filed their request. It is
15 identified in your case folders as Exhibit 43.

16 The existing order expired February 21, 2010.

17 Pursuant to section 3130.6(a),
18 there were no responses from other parties in
19 the original application. We do have a filing
20 of a report from the Office of Planning on
21 April 6, 2010, identified in your case folders
22 as Exhibit 44.

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1 The Board is to act on the merits
2 of the request to extend, pursuant to section
3 3130.6. And that completes the staff's
4 briefing, Madam Chair.

5 CHAIRPERSON MOLDENHAUER: We have
6 one preliminary matter on this before going
7 into the deliberations on the case in chief,
8 which is granting the applicant an extension
9 of the time period under 3130.1 for good cause
10 shown.

11 The orders are actually already
12 expired and the application was not submitted
13 30 days prior to the expiration of the order,
14 so based on no undue prejudice, I believe all
15 the Board Members are in consensus to approve
16 that and to grant the tolling of the time
17 period.

18 That being said, we can move on
19 and I'll turn to Ms. Sorg to go through the
20 merits of the case.

21 MEMBER SORG: Okay. Similarly, in
22 this case which is for W Street Acquisitions

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1 LLC in Order No. 17753, I think here also we
2 have good cause shown to grant the extension
3 of two years.

4 In the first prong, the extension
5 was served to all the parties, which is the
6 Office of Planning and ANC-8A, in a timely
7 manner. There have not been, as we
8 understand, substantial changes in the Zoning
9 or the Comp Plan or to the plans of this
10 development.

11 And the applicant has demonstrated
12 in a couple of ways that there is good cause
13 for the extension based on the inability to
14 obtain sufficient financing.

15 In this case, the applicant also
16 indicates that they are negotiating with a
17 lender and so the project is potentially
18 moving forward. They have engaged and their A
19 Team is working and is also in negotiations
20 with the contractor and have obtained a permit
21 to raze a building on the site.

22 So it looks like there is work

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1 being done.

2 The evidence here of inability to
3 obtain financing is in the form of a signed
4 notarized affidavit by Stan Voudrie of the W
5 Street Acquisitions.

6 So similarly, in this case, OP in
7 their report, which is our Exhibit No. 44,
8 indicates that they recommend approval and I
9 believe that we should do the same. Thank
10 you.

11 CHAIRPERSON MOLDENHAUER: Thank
12 you, Ms. Sorg. That was a fabulous analysis.

13 I think that you know, you have
14 said everything. Just a couple of points.
15 The original order indicated that there was no
16 parties in opposition, so that, obviously,
17 goes towards the first prong.

18 And then in addition to that, the
19 affidavit that you referenced indicates that
20 the applicant was unsuccessful in developing
21 project financing and has had trouble trying
22 to obtain financing that would make the

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1 project profitable. So that would, obviously,
2 satisfy the second prong under section (c),
3 which would be to show substantial evidence.

4 And is there any additional
5 deliberation by any other Board Members?

6 Is there a motion?

7 MEMBER SORG: Sure. I will submit
8 a motion to grant approval of the requested
9 two year extension of BZA Order 17753 for W
10 Street Acquisitions.

11 CHAIRPERSON MOLDENHAUER: I will
12 second.

13 And then I all those in favor say
14 aye?

15 ALL: Aye.

16 CHAIRPERSON MOLDENHAUER: Mr. Moy,
17 can you, please, read back the vote?

18 MR. MOY: Yes, Madam Chair. Staff
19 would record the vote as 3-0-2. This is on
20 the motion of Ms. Sorg to approve the two year
21 extension of the order, seconded by Ms.
22 Moldenhauer, in support of the motion, Mr.

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1 Dettman. No other Board Member or Zoning
2 Commissioner participating.

3 Again, the final vote is 3-0-2.

4 CHAIRPERSON MOLDENHAUER: We would
5 like to waive the requirements for a -- and
6 request a summary order.

7 MR. MOY: Yes. Thank you.

8 The next and last application,
9 Madam Chair, again, is a motion to extend the
10 validity of Order No. 17721, which would be
11 17721-A of Camden Development, Inc. through
12 NOMA Development LLC, pursuant to 11 DCMR 3130
13 of the Zoning Regulations.

14 The original application was
15 approved on February 26, 2008. That
16 application was granting the relief to allow
17 the construction of a new 14-story apartment
18 building in the C-3-C District at premises 60
19 L Street, N.E., Square 673, Lot 841.

20 The relief approved was for a
21 special exception from the roof structure
22 design provisions under subsections 400.7,

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1 411.3, 411.5 and 411.11.

2 The applicant filed on February
3 26, 2010, that document is in your case
4 folders identified as Exhibit 33. There are
5 no responses from parties, the original
6 parties to the original application pursuant
7 to section 3130.6.

8 The Office of Planning did file a
9 report dated April 12, 2010, which was
10 yesterday, which would be a bit untimely,
11 identified as Exhibit 34 in your case folders.

12 Finally, the Board is to act on
13 the merits of the request to extend, pursuant
14 to 3130. And that completes the staff's
15 briefing, Madam Chair.

16 CHAIRPERSON MOLDENHAUER: Thank
17 you very much, Mr. Moy. As you indicated, the
18 first matter of business would be to waive our
19 requirements and to permit the Office of
20 Planning's Exhibit No. 34, their report, into
21 the record, seeing that it was filed late.

22 I think that by consensus, that

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1 will be granted.

2 And then I will turn to Ms. Sorg
3 to go through the merits of the case.

4 MEMBER SORG: Thank you, Madam
5 Chairwoman. So in this case, again, we have
6 under section 3130.6 our being shown good
7 cause.

8 Under the first prong, the only
9 party in the application, as was mentioned,
10 was the ANC-6C and both they and OP were
11 provided documentation of the request for
12 extension in a timely fashion.

13 Under the second prong, there have
14 not been, again, any changes in any material
15 facts, including no changes in the Zoning
16 Regulations or in the Comprehensive Plan. The
17 OP report notes that there has been some
18 construction in the neighborhood, but none
19 that affects in any major way this
20 development.

21 There seem to be from the
22 applicant's filing a couple of small changes

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1 in their plans, but nothing that would be
2 really material to the order that was approved
3 prior.

4 For the third prong, substantial
5 evidence is shown for an inability to obtain
6 sufficient financing. Again, in the form of a
7 signed and notarized affidavit of Mark Bucci,
8 I hope I say that right, from Camden
9 Development, indicating that they have
10 invested significantly in the project and have
11 been unable to come to an agreement with the
12 lender and are committed to moving forward on
13 the project.

14 So as OP indicates in their
15 report, I also believe that we should approve
16 or grant their request for the extension in
17 this case. Thank you.

18 CHAIRPERSON MOLDENHAUER: Thank
19 you very much. Any additional comments from
20 Board Members?

21 If not, is there a motion?

22 MEMBER SORG: Yes. I'll submit a

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1 motion in Application 17721 for Camden
2 Development through NOMA Development LLC to
3 grant the requested two year extension of
4 Order No. 17721, which I said already. Thank
5 you.

6 CHAIRPERSON MOLDENHAUER: And I
7 will second that.

8 And then all those in favor say
9 aye.

10 ALL: Aye.

11 CHAIRPERSON MOLDENHAUER: Mr. Moy,
12 may you, please, read back the record?

13 MR. MOY: I'm delighted to, Madam
14 Chair. That would be 3-0-2 on the motion of
15 Ms. Sorg to approve the request to extend,
16 seconded by Ms. Moldenhauer, in support of the
17 motion Mr. Dettman. No other Board Member or
18 Zoning Commissioner participating. And again,
19 the final vote 3-0-2.

20 CHAIRPERSON MOLDENHAUER: And we
21 would like to waive the rules and have a
22 summary order, please.

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1 MR. MOY: Will do. Thank you,
2 Madam Chair.

3 CHAIRPERSON MOLDENHAUER: Thank
4 you.

5 And then that concludes our
6 Special Meeting for the BZA. And we will
7 brief and start our morning hearing.

8 (Whereupon, the Special Public
9 Meeting was concluded at 10:15 a.m.)

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