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John T. Epting
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March 6, 2009

By Hand Delivery

Ruthanne Miller, Chairperson
D.C. Board of Zoning Adjustment
441 4th Street, N.W.
Second Floor
Washington, D.C. 20001

RECEIVED
D.C. BOARD OF ZONING
2009 MAR -6 PM 2:42

**Re: Board of Zoning Adjustment Order Nos. 17600 and 17606 –
Emergency petition to extend Orders**

Dear Chairperson Miller and Members of the Board:

On behalf of Dakota Square, LLC, and Dakota Points, LLC (collectively, the “Property Owners”), the owners of 300-320 Riggs Road, NE (Lot 52 in Square 3748), and 5543-5575 South Dakota Avenue, N.E. (Lot 22 in Square 3760), respectively, and the applicants under BZA Order Nos. 17600 and 17606 (“Orders”), respectively, we hereby submit this letter as an emergency petition to extend the expiration date of the Orders. On February 27, 2009, the Property Owners filed the attached Exhibit A into the record of Zoning Commission Case No. 09-01 in order to petition the Zoning Commission to adopt that proceeding as an emergency rulemaking. If the Property Owners’ petition is accepted by the Zoning Commission, the BZA will be explicitly empowered under 11 DCMR § 3130 to extend its own

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17606
EXHIBIT NO. 40

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Board of Zoning Adjustment
District of Columbia
CASE NO. 17606
EXHIBIT NO. 40

Orders immediately upon such approval by the Commission. Further, if that emergency rulemaking is adopted by the Zoning Commission, the expiration date for a BZA Order will be tolled as of the day of filing for an extension of such Order. Finally, we believe that even without the authority possibly granted by Zoning Commission Case No. 09-01, the BZA has the authority to modify time frames of its Orders as discussed below.

Zoning Commission Case No. 09-01 is a text amendment to 11 DCMR §§ 3129 and 3130, which: (i) would permit the BZA to grant a time extension to a BZA Order to allow more time to file such plans (and bring the powers of the BZA into conformance with the powers of the Zoning Commission to extend its Planned Unit Development (“PUD”) orders by two years for just cause shown), and (ii) would make the time to request minor modifications to approved plans the same as the two year period allowed to file plans for a building permit with the Department of Consumer and Regulatory Affairs (“DCRA”) (see the Office of Planning Report attached as Exhibit B). The amendments would also establish a procedure through which the BZA would be able to consider other modifications to its Orders. The emergency petition attached as Exhibit A is scheduled for consideration before the Zoning Commission on March 9, 2009 (See the Commission’s Agenda for its March 9, 2009 meeting attached as Exhibit C) and Zoning Commission Case No. 09-01 is

currently scheduled for hearing on March 30, 2009 (See the Public Hearing Notice attached as Exhibit D).

Even if Zoning Commission Case No. 09-01 is not approved by the Commission, the BZA possesses the implicit authority to amend 11 DCMR § 3130.1 under 11 DCMR § 3100.5 in order to extend its Orders as it deems necessary. Under 11 DCMR § 3100.5, the BZA “may, for good cause shown, waive any of the provisions of [Chapter 31 of the Zoning Regulations] if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.”

Property Owners’ Request

Therefore, Property Owners hereby request, under Zoning Commission Case No. 09-01 (11 DCMR § 3130.8) and 11 DCMR § 3100.5, that:

1. The BZA waive its time limits relating to BZA Order No. 17600 and BZA Order No. 17606 for good cause shown and allow the Orders to remain effective for two (2) years after March 21, 2009 and May 9, 2009, respectively; or
2. BZA Order No. 17600 is extended for a period of two (2) years from March 21, 2009, and that BZA Order No. 17606 is extended for a period of two (2) years from May 9, 2009; and

3. The expiration date for each of the Orders is tolled from the date of this letter while the BZA considers this petition and the Commission considers Zoning Commission Case No. 09-01.

Standards for Evaluation of Request

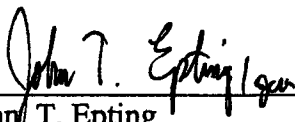
The Property Owners are asking for such action by the BZA as the result of unprecedented negative economic circumstances impacting development in the District of Columbia. As is the case with so many projects throughout the District of Columbia, and as described in the March 5, 2009 article in the Washington Post (attached as Exhibit E), despite strong efforts the Property Owners have not been able to achieve financing which would allow the preparation of construction plans and the filing of their building permit applications. Therefore, the Property Owners will lose their entitlements under the Orders if the BZA does not approve one of the requested actions. As a result of limited financing, the Property Owners have not been able to pay for the construction drawings necessary to obtain a building permit from DCRA or to reapply to the BZA for a modification to their BZA Orders¹.

¹ The Property Owners' projects are part of an area-wide development which includes a property governed by a Land Disposition and Development Agreement ("LDA") with the District of Columbia, recently finalized by the District of Columbia and an affiliate of the Property Owners. If the Property Owners' Orders expire, it will likely impact the entire area-wide development.

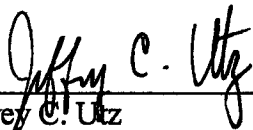
Further, the approval of the Property Owners' request will not prejudice the rights of any party and is not otherwise prohibited by law. Just as the initial relief of BZA Order Nos. 17600 and 17606 did not prejudice the rights of any party, the extension of the Orders will not prejudice any party. There are no neighbors or structures that would be adversely affected as the result of the loading variance relief under BZA Order No. 17600 or the special exception relief for the varying heights of the roof structure under BZA Order No. 17606. In fact, since the projects proposed are part of an area-wide project benefiting the local community and revitalizing the South Dakota Avenue and Riggs Road intersection, the effects on the neighbors and community would be positive if the Orders are extended. An adverse effect would likely result from allowing the Orders to expire. There are no prohibitions under D.C. laws that would disallow the extension of the Orders as requested.

We would be happy to produce any other information or evidence in support of the above letter and greatly appreciate your consideration of this matter.

Respectfully submitted,



John T. Epting

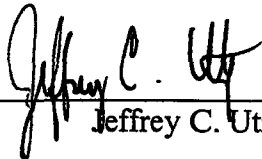


Jeffrey C. Utz

cc: Jennifer Steingasser
Joe Carrol

Certificate of Service

I certify that on March 6, 2009, I delivered a copy of the foregoing document via hand delivery or first class mail to the addresses listed below.



Jeffrey C. Utz

Stephen Mordfin
Office of Planning
2000 14th Street, N.W., Suite 4000
Washington, D.C. 20009

ANC 4B (9 copies)
6856 Eastern Avenue, N.W. #314
Washington, D.C. 20012

Douglass Sloan
313 Nicholson Street, N.E.
Washington, D.C. 20011

Exhibit A



Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW | Washington, DC 20037-1122 | tel 202.663.8000 | fax 202.663.8007

John T. Epting
Phone: 202.663.8879
john.epting@pillsburylaw.com

February 27, 2009

By Hand Delivery

Mr. Anthony Hood, Chairman
D.C. Zoning Commission
441 4th Street, N.W.
Second Floor
Washington, DC 20001

**Re: Zoning Commission Case No. 09-01 (Text amendments to permit
time extensions for Board of Zoning Adjustment ("BZA") Orders
and to clarify procedures for modification of approved plans) –
Petition to adopt an emergency rulemaking and additional
language for text amendment**

Dear Chairman Hood and Members of the Commission:

On behalf of Dakota Points, LLC, and Dakota Square, LLC (collectively, the "Property Owners"), the owners of 5543-5575 South Dakota Avenue, N.E. (Lot 22 in Square 3760), and 300-320 Riggs Road, NE (Lot 52 in Square 3748), respectively, we hereby submit this letter as a petition to adopt an emergency rulemaking and add language to the text amendment in the above-referenced Zoning Commission Case under D.C. Code § 1-1501 et seq. (the "DC Administrative Procedures Act") and 11 DCMR § 3011.7. The Property Owners were the applicants in BZA Case Nos.

17600 and 17606, both of which were approved for relief by the BZA and will expire if Zoning Commission Case No. 09-01 is not adopted as an emergency rulemaking.

Zoning Commission Case No. 09-01 is a text amendment to 11 DCMR §§ 3129 and 3130, which: (i) would permit the BZA to grant a time extension to a BZA Order to allow more time to file such plans (and bring the powers of the BZA into conformance with the powers of the Zoning Commission with respect to granting authority to extend its orders by two years for just cause shown), and (ii) would make the time to request minor modifications to approved plans the same as the two year period allowed to file plans for a building permit with the Department of Consumer and Regulatory Affairs (“DCRA”) (see the Office of Planning Report attached as Exhibit A). The amendments would also establish a procedure through which the BZA would be able to consider other modifications to its Orders. Zoning Commission Case No. 09-01 is currently scheduled for hearing on March 30, 2009 (See the Public Hearing Notice attached as Exhibit B).

Although we greatly appreciate the filing of Zoning Commission Case No. 09-01 and the work of the Office of Planning (“OP”) and the Office of the Attorney General (“OAG”) related thereto, we believe that this case should be adopted and processed as an emergency rulemaking. Under D.C. Code § 1-1501 et seq., the Commission is an “independent agency”. As a result, under the DC Administrative Procedures Act, the Commission may adopt “a rule [...] necessary for the immediate

preservation of the public peace, health, safety, welfare, or morals.” Such an emergency rulemaking is necessary to preserve the public welfare in the instant case. The expiration of the BZA orders is not only afflicting the Property Owners’ property¹. As the result of unfortunate economic circumstances, many projects throughout the City have not been able to achieve financing in order to submit their building permit applications and therefore, will lose their entitlements if the rulemaking is not adopted as emergency. As a result of limited financing, these projects have not been able to pay for the construction drawings necessary to obtain a building permit from DCRA or to reapply to the BZA for a modification to their BZA Orders. The following is a brief list of the projects for which the BZA Orders will likely expire prior to the effectively date of Zoning Commission Case No. 09-01 if it is not adopted as an emergency rulemaking²:

<u>BZA Order</u>	<u>Applicant</u>	<u>Address (Square and Lot)</u>	<u>Final Order Date</u>
17600	Dakota Square, LLC	300-320 Riggs Road, N.E. (Square 3748, Lot 52)	March 21, 2007
17606	Dakota Points, LLC	5553-5575 South Dakota	May 9, 2007

¹ However, the Property Owners’ projects are part of an area-wide development which includes a property governed by a Land Disposition and Development Agreement (“LDA”) with the District of Columbia, recently finalized by the District of Columbia and an affiliate of the Property Owners. If the Property Owners’ BZA Orders expire, it will likely impact the entire area-wide development.

² Note that there will be even more cases needing to apply for modifications to their BZA Orders to extend those Orders after July 2009 to ensure that their entitlements are valid for such Orders that expire after July 2009.

		Avenue, N.E. (Parcel 137/86)	
17556	Murillo/Malnati Group	2816-2822 Connecticut Avenue, N.W. (Square 2107, Lots 56, 57, 75, 76)	May 22, 2007
17540, 17541	Capitol Hill Day School	210 South Carolina Avenue, S.E. (Square 765, Lot 803)	June 11, 2007

In addition, our research indicates that there are several more BZA Orders that will expire – or could expire and would need to file for new BZA approvals – prior to the effective date of Zoning Commission Case No. 09-01, if it is not adopted as emergency. Based on further research, attached as Exhibit C is a list of additional BZA Orders for which building permits have been filed and therefore are likely to expire prior to July 2009.

Further, under 11 DCMR § 3011.7, the Commission may expedite cases “regarding which the Office of Planning report and comments at the meeting suggest that: (1) The case has substantial merit in the public interest; (2) The issues in the case are relatively straight forward, and few if any modifications to the proposal are likely to be necessary; and (3) Little or no opposition has yet appeared, and the concerns at this preliminary stage [setdown] appear to be capable of resolution in an expedited

process.” The request to expedite Zoning Commission Case No. 09-01 as an emergency rulemaking satisfies all of the above factors.³

First, as stated above, the case has substantial merit in the public interest. Secondly, the issues in the case as relatively straight forward, as noted by the Commission in the setdown meeting on January 12, 2009, and the text amendment is unlikely to require significant modifications beyond those proposed in this letter. Since the Zoning Regulations already contain similar provisions allowing the Zoning Commission to extend its Orders for two years, the proposed case should be largely non-controversial. Further, much of the rulemaking’s proposed language is the result of technical amendments or practical updates to the Zoning Regulations. Third, no opposition has appeared to Zoning Commission Case No. 09-01 and we strongly believe that no such concerns will surface. Any issues that do arise will be able to be resolved in an expedited manner.

As part of our request for an emergency adoption of Zoning Commission Case No. 09-01, we would also like to request that additional language be inserted in the revisions to 11 DCMR §§ 3129 and 3130 stating that: (i) any applicant who files a petition or motion to extend their BZA Order with the BZA prior to such Order’s

³ Further, under 11 DCMR § 3020.1(k), the presiding officer of the Zoning Commission has the authority to take any action authorized by the Zoning Regulations or necessary under Chapter 30. As a result, the Zoning Commission may consider petitions from affected property owners to modify cases currently on its document into expedited, or emergency, rulemakings, such as this.

expiration date shall toll such expiration date upon the date of filing until the BZA rules on the petition or motion pursuant to 11 DCMR § 3130, and (ii) that the proposed amendments under Zoning Commission Case No. 09-01 shall apply to all BZA Orders in effect as of setdown (on January 12, 2009). Our proposed language is as follows:

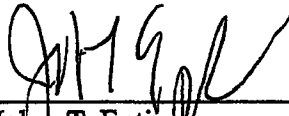
“3130.8 The filing of a petition for extension to a BZA Order by an applicant detailing good cause for delayed construction under such BZA Order shall toll the expiration date of such Order on the date that the petition is filed.

“3130.9 The provisions of this Section shall apply to all Board Orders in effect as of the date of setdown of Zoning Commission Case No. 09-01 on January 12, 2009.”

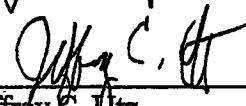
If the Commission does not agree that the emergency adoption of the rulemaking and the additional language outlined above is appropriate, in the alternative, we request an abbreviated comment period for Zoning Commission Case No. 09-01 and the inclusion of our proposed change to 11 DCMR § 3130. Moving up the effective date of Zoning Commission Order No. 09-01, if approved by the Commission, could have a beneficial effect on several properties, although it would still greatly impair many more projects.

We would be happy to produce any other information or evidence in support of the above letter.

Respectfully submitted,



John. T. Epting



Jeffrey C. Utz

cc: Jennifer Steingasser
Joe Carrol

EXHIBIT A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

★ ★ ★

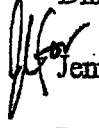
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D.C. OFFICE OF ZONING

2008 DEC 23 PM 4:30

Office of the Director

MEMORANDUM

TO: District of Columbia Zoning Commission

FROM:  Jennifer Steingasser, Deputy Director

DATE: December 22, 2008

SUBJECT: Zoning Commission Case No. 09-01
Time Extensions for Board of Zoning Adjustment Orders
Setdown Report and Prehearing Statement

PETITION

The Office of Planning requests the Zoning Commission amend §§ 3129 and 3130 of Title 11 DCMR and include new provisions, §§ 3129.7, 3129.8, 3130.6 and 3130.7. OP has recently received feedback from applicants with approved Board of Zoning Adjustment (BZA, or "the Board") orders concerning delays in project financing and construction due to the current economic climate, leading to BZA orders expiring before a project is able to proceed to permit. Therefore, the proposal is intended to extend the time period of issued Board orders for good cause, given the current economic circumstances.

This report also serves as a pre-hearing statement.

RECOMMENDATION

The Office of Planning recommends that this case be set down for a public hearing.

PROPOSED TEXT AMENDMENTS

The Office of Planning recommends the following amendments to chapter 31 of DCMR:

11 3130 TIME LIMITS ON BOARD ACTION

ZONING COMMISSION
CASE NO. 09-01
EXHIBIT NO. 1

Amend

3130.1 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 Facility, 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.

ADD

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.**
- (d) No extension granted by the Board shall be valid for a period longer than the original approval.**

OP also recommends the following amendments to Section 3129 to reflect consistency, with two new provisions § 3129.7 and § 3129.8 added for procedural clarity. Section 3129 is proposed to be amended as follows:

11-3129. MODIFICATION OF APPROVED PLANS.

3129.1 This section applies to all appeals and applications filed with the Board under this chapter; provided, however, this section only applies to chancery applications to the extent specified in § 3134.

3129.2 The Board shall consider requests to approve minor modifications to plans approved by the Board, as set forth in §§ 3125.7 and 3231.8. The request shall be in writing, shall state specifically the modifications requested and the reasons therefore and include a copy of the plans for which approval is now

requested.

3129.3 A request for minor modification of plans shall be filed with the Board not later than ~~six months~~ (2) two years after the date of the final order approving the application.

3129.4 All requests for minor modifications of plans shall be served on all other parties to the original application at the same time as the request is filed with the Board. A party shall have ten (10) days within which to submit written comments that such party may have concerning the requested modification.

3129.5 A decision on a request for minor modification of plans shall be made by the Board on the basis of the written request, the plans submitted therewith, and any responses thereto from other parties to the original application.

~~3129.6 No member shall vote on a request for modification of plans unless the member participated in and voted on the original decision or read the record.~~

~~3129.7 Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in approving the application.~~

3129.6 Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon its approving the application.

3129.7 A request to modify other aspects of a Board order may be made at anytime, but shall require a hearing.

3129.8 The scope of a hearing conducted pursuant to § 3129.8 shall be limited to impact of the modification on the subject of the original application, and shall not permit the Board to revisit its original decision.

OP recommends the petition be setdown for public hearing.

JLS/kt
Karen Thomas, Project Manager

EXHIBIT B

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: Monday, March 30, 2009 @ 6:30 P.M.
Office of Zoning Hearing Room
441 4th Street, N.W. Suite 220-S
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Case No. 09-01 (Text amendments to permit time extensions for Board of Zoning Adjustment Orders and to clarify procedures for modification of approved plans)

THIS CASE IS OF INTEREST TO ALL ANCs

The Office of Planning ("OP"), in a report dated December 22, 2008, petitioned the Zoning Commission for a text amendment to 11 DCMR §§ 3129 and 3130. Section 3129 currently authorizes the Board of Zoning Adjustment ("Board" or "BZA") to consider minor modifications to plans if filed within six (6) months of an issued BZA order. The proposed amendment would make the time to request minor modifications to approved plans the same as the two year period allowed to file plans for a building permit with the Department of Consumer and Regulatory Affairs ("DCRA"). The amendment to § 3130 would permit the Board to grant a time extension to allow more time to file such plans. The amendments also establish a procedure through which the Board may consider other modifications to its orders, for example a change to conditions.

At its regular public meeting held January 12, 2009, the Zoning Commission set down this case for a public hearing. The OP report served as the pre-hearing submittal for the case.

The proposed amendments to the Zoning Regulations are as follows, with addition to existing provisions shown in **bold and underlined** text, and deletions to existing provisions shown in ~~strike through~~ text:

CHAPTER 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended as follows:

1. By amending §3129, Modification of Approved Plans, to read as follows:

3129 MODIFICATION OF APPROVED PLANS.

- 3129.1 This section applies to all appeals and applications filed with the Board under this chapter; provided, however, this section only applies to chancery applications to the extent specified in § 3134.
- 3129.2 The Board shall consider requests to approve **minor** modifications to plans approved by the Board, as set forth in §§ 3125.7 and 3125.8. The request shall be in writing, shall state specifically the modifications requested and the reasons therefore and include a copy of the plans for which approval is now requested.
- 3129.3 A request for **minor** modification of plans shall be filed with the Board not later than ~~six months~~ **two (2) years** after the date of the final order approving the application.

- 3129.4 All requests for minor modifications of plans shall be served on all other parties to the original application at the same time as the request is filed with the Board. A party shall have ten (10) days within which to submit written comments that such party may have concerning the requested modification.
- 3129.5 A decision on a request for minor modification of plans shall be made by the Board on the basis of the written request, the plans submitted therewith, and any responses thereto from other parties to the original application.
- ~~3129.6 No member shall vote on a request for modification of plans unless the member participated in and voted on the original decision or read the record.~~
- ~~3129.7 Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in approving the application.~~
- 3129.6 Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in its approving the application.
- 3129.7 A request to modify other aspects of a Board order may be made at anytime, but shall require a hearing.
- 3129.8 The scope of a hearing conducted pursuant to § 3129.7 shall be limited to impact of the modification on the subject of the original application, and shall not permit the Board to revisit its original decision.
2. By amending § 3130, Time Limits on Board Action, as follows:
- (a) By amending § 3130.1 to read as follows:
- 3130.1 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, unless, within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit, unless its validity is extended pursuant to § 3130.6.
- (b) By adding a new § 3130.6 to read as follows:
- 3130.6 Subject to § 3130.7, the Board may grant, without a hearing, 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 applicable period; 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.

3130.7 A time extension granted pursuant to § 3130.6 shall not exceed two (2) years, or one (1) year for an Electronic Equipment Facility.

Proposed amendments to the Zoning Regulations and Map of the District of Columbia are authorized pursuant to the Zoning Act of June 20, 1938, (52 Stat. 797), as amended, D.C. Official Code § 6-641.01, *et seq.*

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations, Title 11, and Zoning. Pursuant to that section, the Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to Sharon Schellin, the Secretary of the Zoning Commission, Office of Zoning, Suite 200-S, 441 4th Street, N.W., Washington, D.C., 20001. Please include the number of this particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, GREGORY N. JEFFRIES, WILLIAM W. KEATING, III, MICHAEL G. TURNBULL, AND PETER G. MAY, ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY RICHARD S. NERO, JR., ACTING DIRECTOR, AND BY SHARON SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

EXHIBIT C

ADDITIONAL BZA CASES EXPIRING BY JULY 2009

BZA CASE NO.	APPLICANT	PROPERTY	FINAL ORDER DATE	BUILDING PERMIT APPLICATION	SUBJECT OF RELIEF
17537	Victor Tabbs	740 13 th Street, S.E. (Square 1045, Lot 97)	July 27, 2007	No application filed.	Relief from the lot occupancy requirement to construct a three-story cellar addition.
17364	CIH/VMS Restorations LLC	2300 block of Skyland Terrace, S.E. (Square 5740, Lot 852)	March 15, 2007 ¹	No application filed.	Relief from § 353 to allow construction of row and semi-detached dwellings, and § 2116.2 to allow one parking space in each front yard.
17570	Inglebrook Group	122 15 th Street, N.E. (Square 1056, Lot 81)	March 7, 2007	No application filed.	Relief from § 330.5 (permitted uses provision) to convert a beauty salon to general office use in the R-4 District.
17578	Hartford Street LLC	2700 Hartford Street, S.E. (Square 5727, Lots 149-154)	April 4, 2007 ²	No application filed.	Relief from § 353 and § 410 to allow the construction of a new residential development (row dwellings) in the R-5-A District.
17583	1634 Associates LLC	14 th and R Streets, N.W. (Square 208, Lots 806-808) (1634-1638 14 th Street N.W., now Lot 140)	April 4, 2007	No application filed.	Relief from the residential recreation space requirements, retail use provisions and off-street parking requirements to construct a residential building with ground floor retail.
17595	O'Tilia V. Hunter	3107 20 th Street, S.E.	June 8, 2007	No application filed.	Relief from the lot area and

¹ This is an Order for Minor Modification/Clarification of Approved Plans; the initial BZA order was issued on October 13, 2005.

² A subsequent Order for Modification of Approved Plans was issued on August 1, 2008.

		(Square 5850, Lot 7)			width requirements, side yard requirements and off-street parking requirements to allow the construction of a single-family detached dwelling.
17633	Government of the Republic of Montenegro	1610 New Hampshire Avenue, N.W. (Square 134, Lot 141)	July 18, 2007	No application filed.	Chancery application to permit use of chancery in DC/SP-1 zone. [Note: This is a Notice of Final Rulemaking and Determination and Order]
17276C	Phillips Park LLC	2101 Foxhall Road, N.W. (Square 1346, Lot 822)	June 27, 2007 ³	No application filed.	Relief from § 2516 to allow the construction of a theoretical lot subdivision for 35 single-family homes.
17623	Meredith Manning	1622 Florida Avenue, N.W. (Square 174, Lot 53)	June 21, 2007	No application filed.	Relief from the lot occupancy and open court requirements to allow the addition of a rear porch to a single-family row dwelling.
17635	Mara Lisson Cuneo	507 C Street, N.E. (Square 838, Lot 804)	July 11, 2007	No application filed.	Relief from the court width requirements and nonconforming structure provision to allow a third story addition to an existing office.
17642	Jeffrey Scott Duncan	2030 37 th Street, N.W. (Square 1301, Lot 848)	July 18, 2007	No application filed.	Relief from the lot occupancy requirements, rear yard requirements and nonconforming structure requirements to allow a ground floor addition to the rear of an existing single-

³ This is a Modification of an Approved Order; the initial BZA order was issued on July 26, 2005.

					family row dwelling.
17639	ARCH Training Center Inc.	1642-1648 V Street, S.E. (Square 5777, Lot 824)	July 19, 2007	No application filed.	Relief from § 353 to allow the construction of a new apartment building in the R-5-A District.
17535	Ann Goodman	3254 O Street, N.W. (Square 1230, Lot 125)	July 2, 2007	No application filed.	Relief from the rear yard requirements to allow the addition of a covered walkway.

Exhibit B

GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF PLANNING



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Office of the Director

MEMORANDUM

TO: District of Columbia Zoning Commission

FROM:  Jennifer Steingasser, Deputy Director

DATE: December 22, 2008

SUBJECT: Zoning Commission Case No. 09-01
**Time Extensions for Board of Zoning Adjustment Orders
Setdown Report and Prehearing Statement**

PETITION

The Office of Planning requests the Zoning Commission amend §§ 3129 and 3130 of Title 11 DCMR and include new provisions, §§ 3129.7, 3129.8, 3130.6 and 3130.7. OP has recently received feedback from applicants with approved Board of Zoning Adjustment (BZA, or "the Board") orders concerning delays in project financing and construction due to the current economic climate, leading to BZA orders expiring before a project is able to proceed to permit. Therefore, the proposal is intended to extend the time period of issued Board orders for good cause, given the current economic circumstances.

This report also serves as a pre-hearing statement.

RECOMMENDATION

The Office of Planning recommends that this case be set down for a public hearing.

PROPOSED TEXT AMENDMENTS

The Office of Planning recommends the following amendments to chapter 31 of Title 11 DCMR:

11 3130 TIME LIMITS ON BOARD ACTION

ZONING COMMISSION
CASE NO. 09-01
EXHIBIT NO. 1

Amend

3130.1 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 Facility, 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.

ADD

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.**
- (d) No extension granted by the Board shall be valid for a period longer than the original approval.**

OP also recommends the following amendments to Section 3129 to reflect consistency, with two new provisions § 3129.7 and § 3129.8 added for procedural clarity. Section 3129 is proposed to be amended as follows:

11-3129. MODIFICATION OF APPROVED PLANS.

- 3129.1 This section applies to all appeals and applications filed with the Board under this chapter; provided, however, this section only applies to chancery applications to the extent specified in § 3134.**
- 3129.2 The Board shall consider requests to approve minor modifications to plans approved by the Board, as set forth in §§ 3125.7 and 3231.8. The request shall be in writing, shall state specifically the modifications requested and the reasons therefore and include a copy of the plans for which approval is now**

requested.

- 3129.3 A request for minor modification of plans shall be filed with the Board not later than ~~six months~~ (2) two years after the date of the final order approving the application.
- 3129.4 All requests for minor modifications of plans shall be served on all other parties to the original application at the same time as the request is filed with the Board. A party shall have ten (10) days within which to submit written comments that such party may have concerning the requested modification.
- 3129.5 A decision on a request for minor modification of plans shall be made by the Board on the basis of the written request, the plans submitted therewith, and any responses thereto from other parties to the original application.
- ~~3129.6 No member shall vote on a request for modification of plans unless the member participated in and voted on the original decision or read the record.~~
- ~~3129.7 Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in approving the application.~~
- 3129.6 Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon its approving the application.
- 3129.7 A request to modify other aspects of a Board order may be made at anytime, but shall require a hearing.
- 3129.8 The scope of a hearing conducted pursuant to § 3129.8 shall be limited to impact of the modification on the subject of the original application, and shall not permit the Board to revisit its original decision.

OP recommends the petition be setdown for public hearing.

JLS/kt
Karen Thomas, Project Manager

Exhibit C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



AGENDA
Regular Public Meeting
1270th Meeting Session (7th of 2009)
Monday, March 9, 2009, @ 6:30 P.M.
Office of Zoning Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

I. PRELIMINARY MATTERS Mrs. Schellin

None

II. CONSENT CALENDAR..... Mrs. Schellin

A. Z.C. Case No. 06-34A (LAT PYD I – Modification to PUD @ Square 1096) – NOTE: also requesting a one-year time extension – see Final Action

III. HEARING ACTIONOffice of Planning

None

IV. PROPOSED ACTION Mrs. Schellin

None

V. FINAL ACTION Mrs. Schellin

A. Z.C. Case No. 06-34A (LAT PYD I – One Year Time Extension for PUD @ Square 1096)

B. Z.C. Case No. 06-04A (Florida & Q Street, LLC – Two Year Time Extension for PUD @ Square 3100, Lot 48)

C. Z.C. Case No. 08-14 (Kelsey Gardens Property Co. LLC – Consolidated PUD & Related Map Amendment @ Square 421)

D. Z.C. Case No. 08-19 (HSC Foundation – Map Amendment @ Square 101)

E. Z.C. Case No. 08-20 (Office of Planning – Text Amendment re: Firearms)

VI. ZRR GUIDANCE..... Office of Planning

None

VII. CORRESPONDENCE..... Mrs. Schellin

- A. BZA Case No. 16110 (Howard University) – Request for a six-month extension for filing an updated campus plan for the West Campus.
- B. Z.C. Case No. 05-42 (Letter requesting the ZC to reexamine the application)
- C. Z.C. Case No. 09-01 (Letter from Pillsbury Winthrop Shaw Pittman requesting adoption of the rulemaking on an emergency basis and adding additional language to the text amendment)

VIII. REPORT OF THE SECRETARY..... Mrs. Schellin

- A. Reminder Schedule

IX. STATUS REPORT..... Office of Planning

X. OTHER BUSINESS Mrs. Schellin

- A. New Cases Filed:
 - 1. Z.C. Case No. 06-04A (Florida & Q Street, LLC – 2 Year PUD Time Extension @ Florida & Q Streets, N.W.)
 - 2. Z.C. Case No. 09-03 (Skyland Holdings LLC – Consolidated PUD & Related Map Amendment @ Squares 5632, 5633, 5641 & Various Parcels)
- B. Orders Published:
 - 1. Z.C. Order No. 453A (Z.C. Case No. 84-19A – World Wildlife Fund, Inc.)
 - 2. Z.C. Order No. 08-02 (Z.C. Case No. 08-02 – Hay-Adams Holdings, LLC)

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

cc: Vincent C. Gray, Chairman
Council of the District of Columbia

Exhibit D

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Monday, March 30, 2009 @ 6:30 P.M.**
 Office of Zoning Hearing Room
 441 4th Street, N.W. Suite 220-S
 Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Case No. 09-01 (Text amendments to permit time extensions for Board of Zoning Adjustment Orders and to clarify procedures for modification of approved plans)

THIS CASE IS OF INTEREST TO ALL ANCs

The Office of Planning ("OP"), in a report dated December 22, 2008, petitioned the Zoning Commission for a text amendment to 11 DCMR §§ 3129 and 3130. Section 3129 currently authorizes the Board of Zoning Adjustment ("Board" or "BZA") to consider minor modifications to plans if filed within six (6) months of an issued BZA order. The proposed amendment would make the time to request minor modifications to approved plans the same as the two year period allowed to file plans for a building permit with the Department of Consumer and Regulatory Affairs ("DCRA"). The amendment to § 3130 would permit the Board to grant a time extension to allow more time to file such plans. The amendments also establish a procedure through which the Board may consider other modifications to its orders, for example a change to conditions.

At its regular public meeting held January 12, 2009, the Zoning Commission setdown this case for a public hearing. The OP report served as the pre-hearing submittal for the case.

The proposed amendments to the Zoning Regulations are as follows, with addition to existing provisions shown in **bold and underlined** text, and deletions to existing provisions shown in ~~striketrough~~ text:

CHAPTER 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended as follows:

1. By amending §3129, Modification of Approved Plans, to read as follows:

3129 **MODIFICATION OF APPROVED PLANS.**

- 3129.1 This section applies to all appeals and applications filed with the Board under this chapter; provided, however, this section only applies to chancery applications to the extent specified in § 3134.
- 3129.2 The Board shall consider requests to approve **minor** modifications to plans approved by the Board, as set forth in §§ 3125.7 and 3125.8. The request shall be in writing, shall state specifically the modifications requested and the reasons therefore and include a copy of the plans for which approval is now requested.
- 3129.3 A request for **minor** modification of plans shall be filed with the Board not later than ~~six months~~ **two (2) years** after the date of the final order approving the application.

- 3129.4 All requests for minor modifications of plans shall be served on all other parties to the original application at the same time as the request is filed with the Board. A party shall have ten (10) days within which to submit written comments that such party may have concerning the requested modification.
- 3129.5 A decision on a request for minor modification of plans shall be made by the Board on the basis of the written request, the plans submitted therewith, and any responses thereto from other parties to the original application.
- ~~3129.6 No member shall vote on a request for modification of plans unless the member participated in and voted on the original decision or read the record.~~
- ~~3129.7 Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in approving the application.~~
- 3129.6 Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in its approving the application.**
- 3129.7 A request to modify other aspects of a Board order may be made at anytime, but shall require a hearing.**
- 3129.8 The scope of a hearing conducted pursuant to § 3129.7 shall be limited to impact of the modification on the subject of the original application, and shall not permit the Board to revisit its original decision.**

2. By amending § 3130, Time Limits on Board Action, as follows:

(a) By amending § 3130.1 to read as follows:

- 3130.1 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, unless, within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit, **unless its validity is extended pursuant to § 3130.6.**

(b) By adding a new § 3130.6 to read as follows:

- 3130.6 Subject to § 3130.7, the Board may grant, without a hearing, 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 applicable period; 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.

3130.7 A time extension granted pursuant to § 3130.6 shall not exceed two (2) years, or one (1) year for an Electronic Equipment Facility.

Proposed amendments to the Zoning Regulations and Map of the District of Columbia are authorized pursuant to the Zoning Act of June 20, 1938, (52 Stat. 797), as amended, D.C. Official Code § 6-641.01, *et seq.*

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations, Title 11, and Zoning. Pursuant to that section, the Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to Sharon Schellin, the Secretary of the Zoning Commission, Office of Zoning, Suite 200-S, 441 4th Street, N.W., Washington, D.C., 20001. Please include the number of this particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, GREGORY N. JEFFRIES, WILLIAM W. KEATING, III, MICHAEL G. TURNBULL, AND PETER G. MAY, ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY RICHARD S. NERO, JR., ACTING DIRECTOR, AND BY SHARON SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

Exhibit E

The Washington Post

Cranes Are Ready, Financing Isn't

D.C. Office Construction at a Standstill as Credit Crunch Hits Downtown

By Dana Hedgpeth
Washington Post Staff Writer
Thursday, March 5, 2009; D01

Not a single office building has been started in the District since October, a sign that the slowdown that began in the far-out suburbs has now reached prime city locations.

"Things are frozen. Nobody's doing anything," said Gerry Widdicombe, director of economic development for the city's Downtown D.C. Business Improvement District. It is the first time in nine years that there's been such a long period with no groundbreakings, according to the brokerage firm Cushman & Wakefield.

The construction cranes that still thrust above the skyline belong to buildings financed before the money for commercial construction disappeared. A few small deals are still getting done, but they often require owners and investors to put more money into the project than before.

The construction slowdown is rippling through the region, where many depend on commercial development for work. Ambitious revitalization plans have stalled, and tax revenue is likely to dry up soon, too.

Longtime developer Douglas Jemal has tried to get \$400 million in financing to turn several blocks next to the new convention center into restaurants, shops, offices and housing, but says he can't get a loan. "I went to everyone out there," he said. "It's ugly."

Developer Jim Abdo is scaling back the size of his \$1 billion, long-term plans to turn a run-down area of auto-body repair shops, a taxi cab company and a strip club along New York Avenue into a mix of shops and housing after not getting \$150 million from two large equity institutions, which he refused to name. The partners backed out because of their own financial troubles and were reluctant to put money into new deals, he said.

For a project to move forward, it has to get money from investors and lenders. In contrast to past downturns, it's not just over-the-top projects in far-out suburbs that are hurting. Well-located projects with deep-pocketed developers are having trouble getting financing, according to analysts, brokers, lenders, investors and developers.

At 17th and H streets NW, developer Vornado and PNC, the bank that will occupy part of a roughly \$200 million office building that's under construction, have put more cash into the deal after the terms of a loan became too onerous. And at Connecticut Avenue and K Street NW, one of the city's premier corners, the owners had to go to multiple lenders to find money.

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"If anything could get money, it is trophy projects, but now you're seeing projects at Main and Main in good locations that aren't getting money," Widdicombe said.

Well-heeled Hines, and its partner, Archstone-Smith, may have to reach out to twice as many investors as usual to try to get equity for their \$800 million mega-project at the old convention center site -- the last huge piece of undeveloped land downtown, at Ninth Street and New York Avenue NW. "We're trying to do this in a tremendously challenging market," said Bill Alsup, who runs the Washington office of Hines.

Even with the Department of Justice -- a gold-plated tenant -- signed up for part of a 2.2 million square-foot project at First and N streets NE, it took Bethesda-based developer StonebridgeCarras more than seven months to close on a \$193 million construction loan.

Cities in particular depend on commercial and residential property taxes to pay for roads, schools, fire trucks and other services. On average, such properties account for 70 cents out of every dollar that a city brings in, according to the Real Estate Roundtable.

The impact of the slowdown has trickled to many corners of the local economy. One prominent architect said he's trying to collect \$3 million on bills that are four months late from developers. Layoffs are becoming more widespread at development companies, brokerages and law firms. Locally, more than 200 architects and engineers have been laid off, according to trade groups. And 25,000 construction workers in the area are out of work.

"It used to be it was hard to find enough people," said Jon Couch, a principal of Rand Construction, which builds out office interiors. "Now you can pick who you want, but you don't have that much work."

Ezra Weinblatt, a real estate broker for tenants, said he now spends much of his time culling through Rolodexes in search of possible clients.

"Half the deals I was going to do aren't there anymore," he said. "I've had nonprofits not get their funding, so they're not moving anywhere. Others aren't expanding. Now I'm really, really busy trying to be busy."

Attendance at networking events is up, as people want to hear about who else is struggling and laid-off workers search for jobs, event organizers say. Some joke that the pastry sizes have shrunk, shrimp cocktails are being replaced with more veggie trays, and instead of bottled water there are large pitchers of tap water.

"It is comatose," said Trip Howell, regional managing director at Jones Lang LaSalle, who represents tenants and landlords. "I'm getting calls from one building where the deli guy isn't selling as many sandwiches. In another, the eyeglass man isn't making as many frames, and in another spot a picture frame shop isn't doing as many pictures and a printer isn't doing brochures." Small to mid-size companies are banking on two of the city's biggest pending projects to keep them in business -- the Hines-Archstone redevelopment of the old convention center site, and a 1,100-room hotel that is supposed to be built next to the new convention center. But the finances for both of them are still uncertain.

Engineering and architecture firms, including Thornton Tomasetti, TOLK and Shalom Baranes Associates, could lose jobs, if the Hines/Archstone-Smith project doesn't get started soon. Nigel

Parkinson, president of D.C.-based Parkinson Construction, said he's down to 70 employees, from 300, and expects his roughly \$20 million annual revenue to fall by half if business doesn't pick up. He said he hopes to land a job as a subcontractor on the hotel and Hines team project.

"If those start up, we could hire back employees," he said. "We can get started having cash flow come back."

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