

**MEMORANDUM**

TO: District of Columbia Board of Zoning Adjustment

FROM: *JS* Jennifer Steingasser, Deputy Director, Development Review and Historic Preservation

DATE: April 5, 2011

SUBJECT: Second Extension of the Expiration of the Orders and Waiver of Rules – BZA Application No.17606-B, 5543-5575 South Dakota Avenue, N.E.

Applicant	Fort Totten South, LLC
Address	5543-5575 South Dakota Avenue, N.E.
Ward / ANC	Ward 4; ANC 4B
Project Summary	Group of three multi-family residential buildings
Effective Date of Original Order	March 21, 2007
First Extension	March 24, 2009
Expiration Date of Extension	May 9, 2011

PHOTOGRAPHS OF SITE:

2009



2011

REQUEST

The application contains the following requests:

1. The applicant requests one of the following:
 - a. A two-year extension of the order to May 9, 2013, or
 - b. The tolling of the application until the reconstruction of South Dakota Avenue and Riggs Road is complete, with the order expiring two years after the completion of the road construction; and
2. Waiver of the Board's rules as contained in Section 3130.6 to allow the granting of a second time extension.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17606-B

EXHIBIT NO. 45



Extension Request Pursuant to § 3130.6

Section 3031.6 of the Zoning Regulations allows for the extension of a BZA approval for “good cause” shown upon the filing of a written request by the applicant before the expiration of the approval; provided that the BZA 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.**

The Certificate of Service submitted as a part of the application indicates that it was served on ANC 4B and the single member district commissioner for 4B09 on March 8, 2011.

- (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.**

Zoning Regulations

There have been no changes to the zone district classification of the subject property.

Surrounding Development

There have been no significant projects approved since the previous approval was granted by the BZA.

Proposed Development

The application indicates that no changes to the approved development are proposed as part of this extension request.

- (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.**

The reconstruction of South Dakota Avenue and Riggs Road was originally proposed to be completed in the fall of 2009, but work did not begin until the spring of 2010. Completion is now anticipated to occur in September 2011, at the earliest. The condition of the roadways and lane closures makes it impossible for the applicant to access the site with its construction vehicles. These factors are all beyond the applicant’s reasonable control.

Waiver of Rules Pursuant to § 3100.5

Section 3100.5 permits the Board to waive its rules if the waiver would not prejudice the rights of any party and is not otherwise prohibited by law.

Section 3130.6 permits an order to be extended one time. Considering the circumstances, it is reasonable to grant a second extension for this application. The delayed commencement of the road construction results in an unusual situation where the applicant is unable to begin work on the site. Therefore, the Office of

Planning recommends that the Board waive its rules and grant a second extension for two years. OP does not recommend that the Board toll the extension until such time as the road construction is complete because of the uncertainty regarding the completion of the work and when the applicant would begin its construction, resulting in a potentially open-ended approval.

The waiving of the rules to permit a second extension and to allow the filing of the application less than thirty days prior to the expiration would not prejudice the rights of any party. It would permit this project to proceed as originally approved, following the completion of the road work.

RECOMMENDATION

The Office of Planning recommends that the Board approve the following:

1. Extension of the Order until May 9, 2013; and
2. Waiver of the Board's rules as stated under § 3130.6, pursuant to § 3100.5, to permit a second time extension.

JS/sjm ^{AICP}

Case Manager: Stephen J. Mordfin, AICP