

Holland & Knight

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OFFICE OF ZONING

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May 13, 2010

VIA HAND DELIVERY

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

Re: BZA Case No. 17831
Two-Year Extension Request

Dear Members of the Board:

On behalf of Georgetown Strategic Capital, the applicant in the above-referenced case, we hereby request the Board of Zoning Adjustment ("Board" or "BZA") to extend the validity of the order in BZA Application No. 17831 an additional two years, pursuant to section 3130.6 of the Zoning Regulations. A copy of the order is attached as Exhibit A. The BZA order is valid for a period of two years, within which time the applicant is required to file a building permit for the approved project, or in this instance, by November 13, 2010. A check in the amount of \$1040.00 is also attached to cover the cost of the filing fee.

I. Background

By Order dated November 13, 2008 in BZA Case No. 17831, the Board approved variances under sections 772, 774, and 633 regarding requirements for lot occupancy, rear yard, and public space at ground level, and a special exception under section 1906.1 regarding driveways from a pedestrian street to required parking or loading, in order to construct a new multiple residence building with ground level commercial uses in the ARTS/C-3-A and ARTS/CR Districts on the southwest corner of the intersection of 14th & U Streets, N.W. (Square 205, Lots 70, 71, 73, 830 and 831). The approval was granted just as the economy was entering the worst recession since the depression of the 1930s.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17831

EXHIBIT NO. 53

Board of Zoning Adjustment
District of Columbia
CASE NO. 17831
EXHIBIT NO. 53

II. The Applicant Meets the Standards for a BZA Extension

A. Standard of Review

Section 3130.6 of the Zoning Regulations authorizes the BZA to extend the time periods for BZA approvals provided (i) the extension request is served on all parties to the application by the applicant, and all parties are allowed thirty 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. Sections 3130.7 – 3130.10 set forth additional criteria for evaluation extension requests.

Here, the applicant seeks a two-year extension of the order's validity due to the applicant's inability to obtain financing despite its good faith efforts and as a result of the economic recession, which is beyond the applicant's control. The extension will facilitate financing efforts and provide certainty to potential lenders that the project approval will not expire during the time it takes to negotiate a loan and begin construction.

B. Service of Extension Request on All Parties

By copy of this letter and attached exhibits, the applicant is serving all parties to the initial BZA application a copy of this extension request, in compliance with section 3130.6(a).

C. Good Cause for the Extension Request

Since approval of the project, the applicant has aggressively pursued financing options for the project. Because of the continuing economic crisis, however, those efforts have been unsuccessful, as discussed in the applicant's affidavit attached as Exhibit B. No segment of the real estate market has escaped the frozen credit markets, including multi-family mixed use projects. At February's annual Mortgage Bankers Association convention, lenders expressed concern that the sharp drop in real estate valuations and the high unemployment rate will continue to make underwriting for multi-family projects nearly impossible.¹ However, some analysts are now predicting the apartment and condominium markets will begin to stabilize in 2010, according to a new report issued by PricewaterhouseCoopers.² As markets for existing residential products stabilize, the credit crunch for new multi-family construction is also expected to lessen. In order to make this project a viable investment for lenders, it is necessary to extend the validity of the BZA order an additional two years. These circumstances are clearly beyond the reasonable control of the applicant and demonstrate that good cause exists to extend the validity of the order in compliance with section 3130.6(b).

¹ Matt Valley, "Multifamily Lenders Share Their Biggest Concerns for the Road Ahead," *National Real Estate Investor Online*, February 3, 2010, http://nreionline.com/property/multifamily/multifamily_lenders_biggest_concerns_0203.

² Denise Kalette, "PricewaterhouseCoopers: Apartment Sector to Lead Rising Property Sales in 2010," *National Real Estate Investor Online*, March 16, 2010, http://nreionline.com/property/multifamily/Pricewaterhousecoopers_apartment_0316.

D. No Material Changes to Project

The proposed project has not changed in any material respect, nor have any of the material facts changed upon which the Board relied in granting the application, in satisfaction of section 3130.6(c).

E. Compliance with Other Applicable Provisions

Under section 3130.7, "no extension granted by the Board shall be valid for a period longer than the original approval." The requested extension is for a period of two years, the same as that given for the original approval.

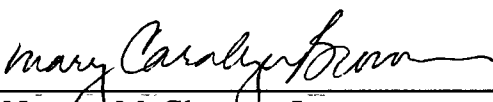
Pursuant to section 3130.9, a request for a time extension filed at least 30 days prior to the date upon which an order is due to expire shall toll the expiration date for the sole purpose of allowing the Board to consider the request. The applicant is filing this request several months in advance of the expiration date, in part to provide assurances to potential lenders that the validity of the order will not lapse while financing is negotiated.

III. Conclusion

In light of this demonstration of good cause and for the reasons stated herein, the applicant respectfully requests that the Board approve a two-year extension of the approved project, such that the validity of the order is extended until November 13, 2012.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 
Norman M. Glasgow, Jr.
Mary Carolyn Brown

Attachments

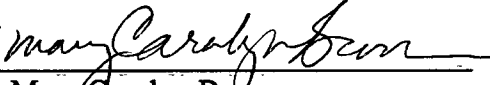
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing letter requesting an extension of BZA Order No. 17831 was served this 13th day of May, 2010, by first-class mail, postage prepaid, on the following:

Chairperson
Advisory Neighborhood Commission 2B
9 Dupont Circle, N.W.
Washington, D.C. 20036

Single Member District Commissioner 2B09
Advisory Neighborhood Commission 2B
9 Dupont Circle, N.W.
Washington, D.C. 20036

Phyllis D. Klein
1910 Treto Way, N.W.
Washington, D.C. 20009


Mary Carolyn Brown

A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17831 of Georgetown Strategic Capital, as amended, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 772, a variance from the rear yard requirements under section 774, a variance from the required public space at ground level under section 633 and a variance from the prohibition of driveways that provide access from a pedestrian street to required parking spaces or loading berths under subsection 1903.2, or in the alternative, a special exception under section 1906.1 from the prohibition of driveways that provide access from a pedestrian street to required parking spaces or loading berths under subsection 1903.2 to construct a new multiple residence building with ground level commercial uses, in the ARTS/C-3-A and ARTS/CR Districts on the southwest corner of the intersection of 14th and U Streets, N.W. (Square 205, Lots 70, 71, 73, 830 and 831).

Note: The applicant amended the application to remove the originally requested variance relief for height, floor area ratio and off-street loading and to add a variance from the required public space at ground level. The Board granted the requested parking relief as a special exception under §1906.1 for relief from the requirements under section 1903.2.

HEARING DATE: November 5, 2008
DECISION DATE: November 5, 2008 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register and by mail to Advisory Neighborhood Commission (ANC) 2B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2B which is automatically a party to this application. ANC 2B submitted a report and testified in support of the application. The Office of Planning (OP) submitted a report in support of granting the three variances. At the hearing, the OP staff person requested additional time for OP to review the special exception for the driveway. The Board determined that it had all the information it needed to decide the case and that a further report from OP was not necessary. Prior to the end of the hearing, the only party to the application, Phyllis Klein, changed from a party in opposition to a party in support.

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PAGE NO. 2

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2, from the variance requirements of sections 772, 774 and 633 and pursuant to § 3104.1 for the special exception under § 1906.1 for relief from the requirements under section 1903.2. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP and ANC reports, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2 and §§ 772, 774 and 633 that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

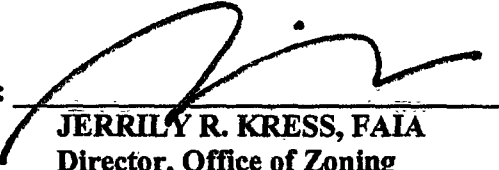
Based upon the record before the Board, the Board further concludes that the applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 1906.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit No. 28, Plans, as modified by the two additional sheets marked as Exhibit No. 40) be **GRANTED**.

VOTE: **3-0-2** (Shane L. Dettman, Ruthanne G. Miller and Gregory N. Jeffries to approve; Marc D. Loud and Mary Oates Walker not participating, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

ATTESTED BY: 

JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: NOV 13 2008

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE

SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment**



BZA APPLICATION NO. 17831

As Director of the Office of Zoning, I hereby certify and attest that on **NOVEMBER 13, 2008**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

Norman M. Glasgow, Jr., Esq.
Holland & Knight, LLP
Suite 100
2099 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Farid Srour
Georgetown Strategic Capital
1919 Pennsylvania Avenue, N.W., Suite 300
Washington, D.C. 20006

Chairperson
Advisory Neighborhood Commission 2B
9 Dupont Circle, N.W.
Washington, D.C. 20036

Single Member District Commissioner 2B09
Advisory Neighborhood Commission 2B
9 Dupont Circle, N.W.
Washington, D.C. 20036

Matthew LeGrant, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

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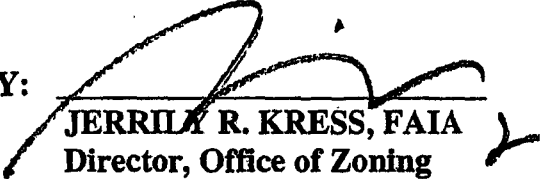
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Phyllis D. Klein
1910 Treto Way, N.W.
Washington, D. C. 20009

Jack Evans, City Councilmember
Ward Two
1350 Pennsylvania Avenue, N.W., Suite 106
Washington, D.C. 20004

Bennett Rushkoff, Esquire
Acting General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR

B

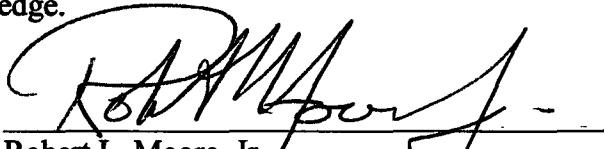
**BOARD OF ZONING ADJUSTMENT
APPLICATION NO. 17831**

Affidavit of Applicant in Support of Two-Year Extension of Time

I, Robert Moore, being duly sworn, depose and state as follows:

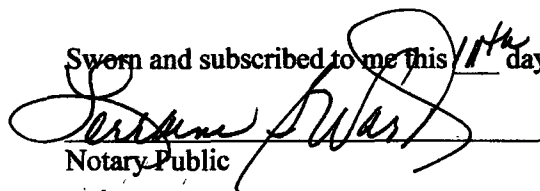
1. I am a representative of Georgetown Strategic Capital ("Georgetown Strategic"), the developer of the property at the southwest corner of 14th & U Streets, N.W. (Square 205, Lots 70, 71, 73, 830 and 831) for which variance and special exception relief was granted in Board of Zoning Adjustment Application No. 17831. As representative for Georgetown Strategic, I have been responsible for obtaining land entitlements and coordinating financing for the proposed residential and retail development at this site.
2. While the project was undergoing BZA review and approval in November 2008, the credit markets worsened as the country continued to slide into an economic recession. Notwithstanding the bleak economic conditions, I contacted several lenders, including Wachovia Bank, PNC Bank, Wells Fargo Bank, AEW, Rock Piont Fund, Carr Properties, ArchStone Smith REIT, and Deutsche Bank, to finance the project. Unfortunately, none were willing to finance the project on any reasonable terms that would result in a profitable undertaking.
3. I have continued to monitor the financial markets closely in order to secure the necessary financing for this project. While the latest reports suggest that the multi-family housing sector may be starting to stabilize, lenders are unwilling to provide financing for projects where governmental approvals will expire within a six month timeframe. Consequently, a two-year extension is necessary in order to provide assurances to prospective lenders for the project.

I solemnly affirm under the penalty of perjury that the contents of this Affidavit are true and correct to the best of my personal knowledge.



Robert L. Moore, Jr.
Georgetown Strategic Capital

Sworn and subscribed to me this 17th day of May, 2010.



Notary Public

Lorraine S. Ward
Notary Public, District of Columbia
My Commission Expires 12/14/2014

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ROBERT L. MOORE, JR.
MARY E. MOTTERSHEAD
3323 P STREET, N.W.
WASHINGTON, DC 20007

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DATE

4/4/10

BZA Filing Fee

PAY TO THE
ORDER OF

DC TREASURER

\$ 1,040 ^{XX}/₁₀₀

one thousand forty

DOLLARS



Security features
are included.
Details on back.

Bank of America



Premier Banking

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EXTEN.

Request #17831

14th & U ST. Project

[Signature]

MP

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