

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

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Application No. 17831-A of Georgetown Strategic Capital, as amended, pursuant to 11 DCMR §§ 3103.2 and 3104.1, 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).

HEARING DATE (Orig. Application): November 5, 2008
DECISION DATE (Orig. Application): November 5, 2008 (Bench Decision)
FINAL ORDER ISSUANCE DATE: November 13, 2008
DECISION ON MOTION TO EXTEND ORDER: June 22, 2010

BOARD OF ZONING ADJUSTMENT
District of Columbia

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17831 CASE NO. _____

EXHIBIT NO. _____

The Underlying BZA Order

On November 5, 2008, the Board of Zoning Adjustment (the "Board" or "BZA") approved the Applicant's request for variances from the lot occupancy requirements under § 772, the rear yard requirements under § 774, the required public space at ground level under § 633, and from the prohibition of driveways that provide access from a pedestrian street to required parking spaces or loading berths under § 1903.2, or in the alternative, a special exception under § 1906.1 from the prohibition of driveways that provide access from a pedestrian street to required parking spaces or loading berths under § 1903.2 to construct a new multiple residence building with ground level commercial uses, in the ARTS/C-3-A and ARTS/CR Districts. Thus, pursuant to 11 DCMR §§

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BOARD OF ZONING ADJUSTMENT
District of Columbia

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3103.2 and 3104.1, the Board granted variances under §§ 772, 774, and 633 regarding requirements for lot occupancy, rear yard, and public space at ground level, and a special exception under § 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 and U Streets, N.W. (Square 205, Lots 70, 71, 73, 830, and 831). The Order was issued November 13, 2008. (BZA Order 17831).

Under the Order, and pursuant to § 3130.1 of the Zoning Regulations, the Order was valid for two years from the time it was issued – until November 13, 2010.

Section 3130.1¹ states:

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 (EEF), unless within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit, except as permitted in § 3130.6.

(11 DCMR § 3130.1)

Motion to Extend

On May 13, 2010, the Board received a letter dated May 13, 2010 from the Applicant, which requested, pursuant to 11 DCMR § 3130.6,² a two-year extension in the authority granted in the underlying BZA Order, which was due to expire November 13, 2010. (Exhibit 53).

The Applicant is requesting a two-year extension in the authority granted in the underlying BZA Order because, due to the deterioration of the real estate market in Washington, D.C., the frozen credit markets, and the continuing economic crisis these have caused, the Applicant has been unable to obtain the necessary financing commitment to begin the project, despite attempts to obtain financing for the project ever since the Board originally approved it. To meet its burden of proof, the Applicant provided a signed and notarized affidavit which indicated that the Applicant has diligently sought financing and attempted to move forward with development of the site

¹ Section 3130.1 was amended by the addition of the phrase “except as permitted in § 3130.6” by the Zoning Commission in Z.C. Case No. 09-01. The amendment became effective on June 5, 2009.

² Section 3130.6 was adopted by the Zoning Commission in Z.C. Case No. 09-01 and became effective on June 5, 2009.

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since the time of the BZA's original approval. The Applicant noted that while the latest reports suggest that the multi-family housing sector may be starting to stabilize, the economy is not expected to rebound prior to the time when the underlying BZA Order was due to expire. (Exhibit 53, Exhibit B).

There was no response to the Applicant's motion filed from any party in the case or the Office of Planning ("OP"). The project is within the boundaries of ANC 2B. ANC 2B did not file a report, nor did Phyllis D. Klein, who was a party in the case, although both ANC 2B and Ms. Klein were served with the motion.

According to the Applicant, the reasons for its request to the Board to extend the time of the Order are because of its inability to secure financing in an unstable economic market and market conditions in the District. The extension would allow the Applicant the additional time in which to secure financing. Accordingly, the Applicant requested that, pursuant to § 3130.6 of the Regulations, the Board extend the validity of its prior Order for an additional two years, thereby allowing the Applicant additional time to secure financing and apply for a building permit.

Criteria for Evaluating Motion to Extend

The Zoning Commission adopted 11 DCMR § 3130.6 in Zoning Commission Case No. 09-01. The Section became effective on June 5, 2009.

Section 3130.6 of the Zoning Regulations states in full:

- 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.

(11 DCMR § 3130.6)

Furthermore, pursuant to 11 DCMR § 3130.9, for a request for a time extension to toll the expiration date of the underlying order for the sole purpose of allowing the Board to consider the request, the motion must be filed at least 30 days prior to the date on which an order is due to expire. The Applicant filed its request on May 13, 2010, which was more than the required 30-day period for tolling.

Also, the Board found that the Applicant has met the criteria set forth in § 3130.6. The motion for a time extension was served on all the parties to the application and those parties were given 30 days in which to respond under § 3130.6(a). The Applicant's inability to secure the necessary permits and financing and the poor economic conditions in the District constitute the "good cause" required under § 3130.6(c)(1).

As required by § 3130.6(b), there is no substantial change in any of the material facts upon which the Board based its original approval. In requesting this extension of the Order, the Applicant's plans for development of the site would be unchanged from those approved by the Board in its Order dated November 13, 2008 (Exhibit No. 28, Plans, as modified by the two additional sheets marked as Exhibit No. 40 in the record). There have been no changes to the zone district classification applicable to the property or to the Comprehensive Plan affecting this site since the issuance of the Board's Order.

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Neither the ANC nor any party to the application objected to an extension of the Order. The Board concludes that the extension of that relief is appropriate under the current circumstances.

Accordingly, pursuant to § 3130.6 of the Regulations, the Board hereby extends the validity of the underlying Order, for a period not to exceed two years from the current expiration date, thereby establishing a new expiration date of November 13, 2012.

Pursuant to 11 DCMR § 3101.6, 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 request for extension of time be **GRANTED** until November 13, 2012.

VOTE: 3-0-2 (Shane L. Dettman, Nicole C. Sorg, Meridith H. Moldenhauer to approve; no Zoning Commission member or other Board member (vacant) participating, nor voting)

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

A majority of the Board members approved the issuance of this order.

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: JUL 01 2010

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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.

IN ACCORDANCE WITH THE 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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.