

February 22, 2013

VIA HAND DELIVERY

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

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18174

EXHIBIT NO. 34

RECEIVED
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Re: Request to Extend Order No. 18174

Dear Chairman Jordan and Members of the Board:

On behalf of EDCO LLC ("Applicant"), the owner of property located at 732 15th Street, SE (Square 1077, Lot 808) ("Property"), and the applicant in the BZA Case No. 18174, we hereby submit a request for a two (2) year extension of BZA Order No. 18174, which granted variance relief for the Property. This request for an extension is made pursuant to 11 DCMR Section 3130 et. seq for the good cause shown herein.

In BZA Case No. 18174, the Applicant sought variance relief in order to convert a commercial laundromat to a residential building and to construct an addition to the building. The Property is located in the C-2-A Zone District and the building occupies approximately 68% of the lot. Commercial properties are permitted to occupy 100% of the lot; however, upon conversion to a residential building, the existing building will be non-conforming as residential buildings are only permitted to occupy 60% of a lot. Accordingly, the Applicant sought relief from Section 2001.3 to allow an addition to an existing building with a non-conforming lot

occupancy. The Applicant also sought relief from the parking requirements of Section 2101.1 of the Zoning Regulations.

Enclosed please find the following:

- Authorization Letter authorizing this application (Exhibit A).
- BZA Form 126, Fee Calculator (Exhibit B).
- Plat of the Property (Exhibit C).
- Zoning Map (Exhibit D).
- BZA Order (Exhibit E).
- Affidavit (Exhibit F).
- The requisite filing fee for this request of \$540.80 (26% of the initial filing fee of \$2,080) in a check made payable to the D.C. Treasurer.

I. OVERVIEW OF THE PROJECT

A. The Property

The Property is located on the east side of 15th Street, SE, just north of its intersection with Pennsylvania Avenue, SE and south of the intersection with Potomac Avenue, SE. The lot is approximately 2,600 square feet in size with 20 feet of frontage along 15th Street and only 5 feet of alley access at the rear of the Property. A plat of the Property is attached as Exhibit C. The Property is currently improved with a one story commercial building that is being used as a laundromat.

The Property is located in the C-2-A Zone District as depicted on the plat attached as Exhibit D. The C-2-A Zone District allows a maximum height of 50 feet and floor area ratio of 2.5. The existing height of the building is approximately 11 feet and the approved height is approximately 48 feet and the approved FAR of the building is 2.1.

The Property cannot accommodate parking given the lack of access to the rear alley; accordingly, the Applicant sought a 100% variance from the parking requirement to provide three parking spaces on-site. The Board agreed that the three prongs of the variance standard were met and that the narrowness of the lot's frontage on the alley gave rise to a practical difficulty in complying with the parking regulations. The Board further agreed that it was impracticable to impose the parking requirement given that there was no way for vehicles to access the Property.

The Applicant also sought a variance for the lot occupancy of the existing building, which exceeded the permissible 60% upon the conversion of the building from commercial use to residential use. Again, the Board agreed that the unique condition of the existing building exceeding the permissible residential lot occupancy gave rise to a practical difficulty in complying with the Regulations. The alternative would require razing a portion of the existing building which would compromise the structural integrity of adjacent buildings. Further, the approved addition complied with the lot occupancy requirements, minimizing any impacts from the increase in lot occupancy on the first floor. In sum, the Board approved the Applicant's project as submitted.

B. Project and Project Approval

The Property is improved with an existing one-story commercial building. The Applicant proposed the conversion of the existing building to residential use and the construction of a two-story residential addition. The Board approved the project with a maximum height of 48 feet and a maximum floor area ratio of 2.1. The approved addition complied with the lot occupancy and set back requirements set forth in the Zoning Regulations.

The existing building, however, did not comply with the residential lot occupancy requirements as noted above, and the project as a whole did not comply with the parking requirements for a residential building. Accordingly, the Applicant applied for a variance for an existing building that is non-conforming as to lot occupancy (Section 2001.3). Specifically, it sought a variance from the lot occupancy requirements of Section 772.1 and a variance from the off-street parking requirements under Section 2101.1.

On December March 15, 2011, in BZA Case No. 18174, the Board voted to approve the proposed project with the above-described relief. BZA Order No. 18174 was effective on April 2, 2011. A copy of BZA Order No. 18174 is attached as Exhibit E.

II. **JURISDICTION AND STANDARD OF DECISION OF THE BZA**

The BZA is permitted to extend its Orders under Section 3130 et seq. of the Zoning Regulations. Section 3130 et seq. permits the BZA to extend its Orders for a period of two (2) years. Sections 3130.6 and 3130.7 limit extension to one (1) two (2) year period. Given the Applicant's ongoing efforts to move this Project forward, we believe an extension of the Order is appropriate.

In order to extend a BZA Order under 11 DCMR Section 3130.6, the BZA must determine that: (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 Order that would undermine the BZA's justification for approving the original Order, and (c) the applicant demonstrates that there is good cause for such extension.

III. **RATIONALE FOR EXTENSION OF BZA ORDER NO. 18174**

A. **Extension request served on all parties to the application**

This extension request is being served simultaneously on the only party to the original application, ANC 6B. The ANC is allowed thirty (30) days to respond to this request. The extension request is also being sent to the public agencies that reviewed the original application. This project was supported by the ANC, the Office of Planning and the District Department of Transportation. In large part, each of these entities was supportive of the project because it was converting a commercial property into a residential property. The project promises to have a positive effect on the community as it will provide stability, enliven an underutilized property, and create activity on a site that otherwise closes at the end of the work day.

B. **No Substantial Change to Any of the Material Facts**

There has been no substantial change to any of the material facts concerning this case. The neighborhood remains largely unchanged since the BZA application was approved; the modest changes that have taken place only further support the request for variance relief, particularly the relief from the parking requirements. Specifically, the property continues to be located within 250 feet of the Potomac Avenue Metrorail Station but now there is both a Capital Bikeshare Station and a ZipCar parking lot within one block, which further mitigates any impacts from the parking variance. Otherwise, the Property is still located adjacent to a string of rowhouses, which supports the conversion of the site to residential use.

The legal standard for granting the variance has not changed since 2011, thus, the findings of uniqueness, practical difficulty and no adverse effects hold true today. In sum, the property is unique because it is improved with a commercial building that occupies 68% of the

lot. Further, though the Property has frontage on an alley, the lot is only 5 feet wide at the access point, precluding vehicular access to the Property from the alley. Each of these unique features gives rise to a practical difficulty in complying with the Zoning Regulations. Residential properties in the C-2-A Zone District are permitted maximum lot occupancy of 60%; the existing building will not comply with this requirement once it is converted to residential use. In order to comply with the Zoning Regulations, the Applicant would have to remove a portion of the existing footprint. The project architect testified that doing so would compromise not only the integrity of the building, but the integrity of adjacent buildings as well. Accordingly, reducing the building footprint to 60% lot occupancy was not a feasible option. With respect to parking, the lot does not have vehicular access to the alley located at the rear of the Property. The lot is only 5 feet wide at the point it meets the alley, which is not sufficient for the width of a car to maneuver from the alley onto the Property; accordingly, there is no way to access parking on the Property.

The final element of the variance test is that the requested relief will not have an adverse effect on the Zone Plan or Maps. The Office of Planning, District Department of Transportation, and the ANC all concluded that the relief is fully consistent with the Zone Plan and Maps and will not have an adverse effect on neighboring properties. The facts that factored into the Board's approval of this application have not changed since 2011.

C. Good Cause for Delay and Actions Subsequent to Issuance of BZA Order No. 18174

Under the third prong of Section 3130.6, in order to determine whether a BZA Order should be extended, the Board must determine whether there is "good cause shown" for the requested extension. Under Section 3130.6, good cause for the extension must be demonstrated

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.

In granting past extensions, the Board (and the Zoning Commission¹) has determined that adverse market conditions and an applicant's efforts to finance and market a project approved by a BZA Order in spite of those negative conditions, constitute good cause under the first type of good cause criteria described in Section 3130.6. In the instant case, the Applicant has had difficulty financing the proposed renovation and addition to the existing building.

The Owner requires an extension of the BZA Order due to the dearth of financing options available to developers in today's economy. It has been widely known that the tightening of credit is a result of the recent decline of the real estate market. Those lenders that are active in backing projects require incredibly stringent terms, which ultimately undermine the economic feasibility of smaller projects. Specifically, construction financing is increasingly difficult to obtain as lender support for smaller projects wanes. The Applicant has made several attempts to finance the project approved by the BZA but has met with obstacles from financial institutions. As demonstrated in the affidavit attached as Exhibit F, the Applicant has approached more than

¹ The extension considerations under Section 3130.6 of the Zoning Regulations are analogous to, and based on, similar powers granted to the Zoning Commission under Section 2408.11 of the Zoning Regulations. The standards for consideration of an extension to a BZA Order are the same as those required for consideration of a Planned Unit Development ("PUD") Order.

one bank but was not successful in securing financing for the project. Despite the inability to obtain financing, the Applicant proceeded with additional architectural, legal and administrative expenses (up to almost 10% of the initial cost of the property itself) in the hopes that once financing was in place, it could proceed immediately with the project. Unfortunately, the financing prong of the plan never came to fruition.

D. Compliance with 11 DCMR Section 3130.9

Under 11 DCMR Section 3130.9, a request for a time extension must be filed at least thirty (30) days prior to the date upon which an order is due to expire. BZA Order No. 17969-A will expire on April 2, 2013. This request for an extension is being filed on February 20, 2013, well before the March 3, 2013 date specified by 11 DCMR Section 3130.9.

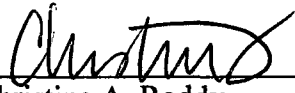
IV. CONFORMANCE TO THE COMPREHENSIVE PLAN AND THE ZONING REGULATIONS

This request for an extension of time within which to complete the Project is consistent with the intent and purposes of the Zoning Regulations, the requirements of Chapter 31 of the Zoning Regulations, and the District of Columbia Comprehensive Plan (“Plan”) for the National Capital. The Land Use Map of the Plan designates the site for Moderate Density Residential use and immediately adjacent to Moderate Density Commercial use. The Plan’s land use designation of the Property has not changed since the Order was approved. Further, the existing commercial use and commercial zoning designation for the Property has not changed since the Order was approved. The Property is immediately adjacent to property designated as appropriate for Moderate Density Commercial land uses, which is also consistent with the existing use.

V. **CONCLUSION**

For all of the above reasons constituting good cause, the Applicant requests a two (2) year extension for BZA Order No. 18174.

Respectfully submitted,



Christine A. Roddy

cc: Gary Cohen

Certificate of Service

I certify that on February 22, 2013, I delivered a copy of the foregoing document via hand delivery or first class mail to the addresses listed below.

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Christine A. Roddy

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