

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18174-A of EDCO, LLC¹, Motion for a Two-Year Extension of BZA Order No. 18174, pursuant to § 3130 of the Zoning Regulations.

The original application was pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 722.1, a variance from the off-street parking requirements under § 2101.1, and a variance from the requirements for an addition to a non-conforming structure under § 2001.3, to allow the conversion of an existing one-story commercial building (Laundromat) to a three-story apartment building in the C-2-A District at premises 732 15th Street, S.E. (Square 1077, Lot 808).

HEARING DATE (Orig. Application):	March 1 and March 15, 2011
DECISION DATE (Orig. Application):	March 15, 2011
FINAL ORDER ISSUANCE DATE (No. 18174):	March 23, 2011
DECISION DATES ON MOTION TO EXTEND ORDER:	March 26 and April 9, 2013

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 18174

The Underlying BZA Order

On March 23, 2011, the Board of Zoning Adjustment (the “Board” or “BZA”) approved EDCO LLC’s (the “Applicant”) request for a variance from the lot occupancy requirements under § 722.1, a variance from the off-street parking requirements under § 2101.1, and a variance from the requirements for an addition to a non-conforming structure under § 2001.3, to allow the conversion of an existing one-story commercial building (Laundromat) to a three-story apartment building in the C-2-A District. Thus, pursuant to 11 DCMR § 3103.2, the Board granted variances from the lot occupancy requirements under § 722.1, from the off-street parking requirements under § 2101.1, and from the requirements for an addition to a non-conforming structure under § 2001.3, to allow the conversion of an existing one-story commercial building (Laundromat) to a three-story apartment building in the C-2-A District at premises 732 15th

¹ The original application was captioned Gary Cohen, who is the authorized representative for the Applicant, EDCO LLC. The caption has been changed to reflect that.

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO.

18174

EXHIBIT NO.

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Street, S.E. (Square 1077, Lots 808). Order No. 18174 (the “Order”) was issued March 23, 2011. (Exhibit 31.)

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 March 23, 2013.

Section 3130.1² 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 February 22, 2013, the Board received a letter from the Applicant’s attorney, which requested, pursuant to 11 DCMR § 3130.6,³ a two-year extension in the authority granted in the underlying BZA Order, which was then due to expire on March 23, 2013. (Exhibit 34.) The Applicant submitted additional information in support of the Motion to Extend on March 18, 2013, that provided more details regarding the expenditures the Applicant made in pursuing the project. (Exhibit 36.)

On March 26, 2013, the Board convened a public meeting to consider the Motion to Extend BZA No. 18174 for two years. At that meeting, the Board requested additional information from a potential lender and allowed the Applicant to supplement the record with a letter from a lender that the Applicant had approached for financing of its project to demonstrate the Applicant’s inability to secure financing so as to show good cause for the extension. In response, on April 2, 2013, the Applicant submitted a letter from the Bank of Georgetown, which detailed the lender’s concerns regarding the uncertainties of the market and provided the Bank’s rationale for declining to finance the condominium project on the property, to supplement the record and meet the good cause requirements of 11 DCMR § 3130.6. (Exhibit 38.)

The Applicant served its extension request on the parties to the case and provided them the requisite 30 days in which to respond, pursuant to § 3130.6. The Applicant served the request to the Chair of Advisory Neighborhood Commission (“ANC”) 6B, which is the affected ANC and the only other party to the case, and to the Office of Planning (“OP”), notifying them of the

² 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.

³ 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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Applicant's motion for a two-year time extension and sharing all documentation in support of that motion with them. (Exhibits 33 and 38.)

The project is within the boundaries of ANC 6B. ANC 6B filed a Form 129 and written report in support of the Applicant's request for extension. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 12, 2013, with a quorum present, the ANC considered and voted 10:0 in support of the request for a two-year extension. (Exhibit 35.) OP filed a report recommending that the Board grant the Applicant's request for a two-year extension of Order No. 18174. (Exhibit 37.)

To demonstrate good cause for its request for an extension, the Applicant's February 22nd filing contained an affidavit from Gary Cohen, President of EDCO LLC which is the owner of the 732 15th Street, S.E. ("subject property") and an affiliate of Willco Residential LLC. EDCO LLC is the Applicant of the underlying case and requested the extension. Mr. Cohen attested that the Applicant purchased the subject property in December 2010 and that he, as Principal-in-Charge of the subject property is responsible for efforts related to designing, constructing, financing and marketing the renovation of and addition to the existing Laundromat on the subject property ("Project"). He also attested that since the Board's approval in BZA Case No. 18174, the Applicant has been proceeding in good faith with the Project as approved in Order No. 18174. However, the Applicant has been unable to obtain sufficient project financing due to economic and market conditions beyond the Applicant's control. Mr. Cohen indicated that after acquiring the property, the Applicant approached several banks for to obtain financing, but was unable to secure financing from any of them. Also, since acquisition of the property, the Applicant has spent approximately \$60,000 related to the Project, which amount represents in excess of 15% of the value of property based on its purchase price. The Applicant continues its efforts to secure construction financing for the Project. (Exhibit 34, Tab F.)

In addition, the Applicant submitted a letter supplementing the previously filed request for an extension with additional information regarding the expenditures the Applicant has made to date. The Applicant indicated that since receiving approval of Order No. 18174, the Applicant has spent approximately \$32,000 in pursuing the Project, which is approximately eight percent of the acquisition cost of the property. (Exhibit 36.)

Finally, as mentioned heretofore, at the Board's request, the Applicant submitted a letter from one of the banks it had approached for construction financing that explains why the bank did not choose to provide financing for the Project at this time. The letter was from the Bank of Georgetown and signed by the Senior Vice President, Real Estate Finance. The letter outlined the bank's reasons for declining to provide construction financing for the Project, stating that the bank had concerns regarding the "uncertainty of the market as it related at that time to condominium development projects" and that "having these concerns, the Bank chose not to consider construction financing for this property." (Exhibit 38.)

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As discussed above, the Applicant's time extension motion first was put on the Board's March 26, 2013 decision meeting agenda. At that meeting, the Board requested additional supporting documentation pursuant to the requirements of § 3130.6 and rescheduled its decision for April 9, 2013. In response to the Board's request for additional documentation, the Applicant submitted its supplemental filing on April 2, 2013, containing a letter from the Senior Vice President, Real Estate Finance of the Bank of Georgetown who provided information regarding the Applicant's efforts to obtain financing for the Project and why the bank declined to provide financing at this time. (Exhibit 38.)

As discussed herein, the Applicant, through its attorney, submitted a request for a time extension and supplemental information supporting that request, documenting the dearth of financing options available to developers in the current economy, particularly of smaller residential projects such as the Applicant's. The Applicant outlined its difficulties and efforts in securing construction financing for the condominium Project to demonstrate good cause for granting the two-year extension of the Board's prior approval. The Applicant's filings indicated that the Applicant has been unable to secure financing for the Project due to economic and market conditions beyond the Applicant's reasonable control. Moreover, the Applicant has attested that additional architectural, legal, and other predevelopment work is underway and considerable expenditures have been made, but a time extension is required in order for it to have sufficient time in which to complete obtaining financing before it can proceed with the Project. (Exhibits 33 and 36.)

At its decision meeting on April 9, 2013, the Board found that the requirements of 11 DCMR § 3130.6 had been met and granted the Applicant the two-year extension of BZA Order No. 18174 until March 23, 2015.

According to the Applicant, the reasons for its request to the Board to extend Order No. 18174 for another two years are because of the inability of securing financing for construction of the project due to economic and market conditions beyond its reasonable control. The Applicant indicated that over the last two years, the Applicant has made considerable investments and expenditures to continue to proceed with the Project in good faith, but has had difficulty securing construction financing despite having approached several potential lending institutions. To show good cause for a time extension of the Order, the Applicant's filings included an affidavit from the Applicant's President, who was able to provide first-hand documentation of the Applicant's efforts and expenditures as well as its difficulties in securing financing. (Exhibit 34, Tab F.) The Applicant attested that since the Board's approval in BZA Case No. 18174, the Applicant has been proceeding in good faith with the Project as approved, but has been unable to obtain sufficient project financing due to the economic and market conditions beyond the Applicant's control. The Applicant also submitted a letter from one of the potential lending institutions that it applied to for construction financing. That letter outlined the bank's rationale for not providing that financing at this time. (Exhibit 38.)

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In sum, due to the difficulties in obtaining construction financing the Applicant encountered because of market conditions beyond its control, the Applicant has been unable to proceed with the development in sufficient time before the order is due to expire. Even so, the Applicant has continued to proceed with its Project, as demonstrated by the expenditures it cited that it has made to engage an environmental engineer to perform soil studies, engage a broker and invest in market studies for the Project, make pitches to potential investors, and interview general contractors, and, finally, to approach multiple lenders in an effort to secure a construction loan. (Exhibit 36.) The Applicant needs an extension of time in which to secure construction financing “due to the dearth of financing options available to developers in today’s economy.” (Exhibit 34.) Thus, the Applicant requests the two-year extension to allow time for the Applicant to secure financing.

In addition, the Applicant stated that the plans approved for the development of the site and other material facts are unchanged from those approved by the Board in its Order issued on March 23, 2011. Also, there have been no changes to the Zone District classification or the Comprehensive Plan applicable to the property. The extension would allow the Applicant the necessary additional time in which to secure financing, complete its development plans, and file for building permits. 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.

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

Subsection 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.)

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 February 22, 2013, thus meeting the required 30-day period for tolling. Pursuant to 11 DCMR § 3130.9, the Board granted the tolling of the Order's expiration date to provide the Board time in which to consider the request for a two-year extension of that Order.

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 difficulties and inability to obtain the necessary construction financing, despite its efforts in approaching several lending institutions, and the poor economic conditions in the District's real estate market during the period in question 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 March 23, 2011 (Exhibit No. 31 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 original Order.

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.

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. Pursuant to 11 DCMR § 3130, the Board of Zoning Adjustment hereby **ORDERS**

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APPROVAL of Case No. 18174-A for a two-year time extension of Order No. 18174, which Order shall be valid until **March 23, 2015**, within which time the Applicant must file plans for the proposed structure with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

VOTE: 4-0-1 (Nicole C. Sorg, Jeffrey L. Hinkle, Lloyd J. Jordan (by absentee ballot), and Michael G. Turnbull (by absentee ballot) to APPROVE; no other Board member participating.)

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

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

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: April 19, 2013

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.