GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

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Application No. 18289-A of EQR-EYE Street LLC, pursuant to 11 DCMR § 3130, for a two-year extension of BZA Order No. 18289.

> The original application was pursuant to 11 DCMR §§ 3104.1, and 3103.2, for a special exception relating to penthouse uniform height requirements under §§ 771.1 and 411.11, a variance from the lot occupancy requirements under § 772.1, a variance from the closed court requirements under § 776.4, and a variance from the floor area ratio limitations for historic lots under § 1707.4, to restore historic buildings and construct an addition to create a residential and retail building with below-grade parking in the DD/C-2-C District at premises 443-459 I Street, N.W. (Square 516, Lots 812-815, and 876).

HEARING DATE (Original Application):	December 13, 2011
DECISION DATE (Original Application):	January 10, 2012
FINAL ORDER ISSUANCE DATE (Order No. 18289):	January 20, 2012
DECISION ON 1ST EXTENSION OF ORDER DATE:	February 11, 2014 and March 11, 2014

SUMMARY ORDER ON MOTION TO EXTEND THE VALIDITY OF BZA ORDER NO. 18289

The Underlying BZA Order

On January 10, 2012, the Board of Zoning Adjustment (the "Board") approved the Applicant's request for a special exception relating to penthouse uniform height requirements under §§ 771.1 and 411.11, a variance from the lot occupancy requirements under § 772.1, a variance from the closed court requirements under § 776.4, and a variance from the floor area ratio limitations for historic lots under § 1707.4, to restore historic buildings and construct an addition to create a residential and retail building with below-grade parking in the DD/C-2-C District at premises 443-459 I Street, N.W. (Square 516, Lots 812-815, and 876) (the "Site"). The Board issued its written order ("Order") on January 20, 2012. Pursuant to 11 DCMR §§ 3125.6 and 3125.9, the Order became final on January 20, 2012 and took effect 10 days later.

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 January 20, 2014.

Subsection 3130.1 states:

In response to the Board's request for additional information to support its showing of "good cause", the Applicant also submitted the Washington, DC Apartment Market Report from MPF Research for the fourth quarter of 2013 (the "Report", attached as Tab B, Exhibit 48.) and highlighted particularly relevant portions of the Report describing the soft multi-family market that exists in the District, particularly in the vicinity of the Property. The Report concluded that the District is in the midst of a frenzied construction boom that will lead to large supply volumes and challenge absorption. The delivery volume of apartment units was at a 10-year high for the fourth quarter of 2013, and ranked as the nation's largest completion volume during such time. The District's total completions for 2013 reached a two decade high at 10,085 units. The Report also noted that construction levels for multi-family remain elevated, with approximately 23,561 units under construction in metropolitan DC. This is the second largest construction volume in the nation. As a result, the fundamentals of the market have softened and occupancy and rents have dropped along all District market segments, along with rents. The Report noted that new supply volumes are projected to nearly double to 19,300 units over the next four quarters and that "it is very unlikely that the [District] can absorb enough of that new product to prevent a significant occupancy decline over the next year." (See, P. 3 of the Report.) Such figure would be a historical high for the DC area. (See, P. 5 of the Report.) The Report notes that the "Central DC" submarket, where the Property is located, is particularly subject to a surge of supply and construction which will make supply an even bigger factor. (See, P. 6 of the Report.) The Report noted that the supply is likely to become an even bigger risk factor in the Central DC submarket. *Id.* Central DC saw the delivery of the District's largest quarterly supply volume on record. (See, P. 16 of the Report.) Taken as a whole, the Applicant stated that the Report makes clear that an investor or owner such as the Applicant would logically conclude that the DC apartment market will face significant oversupply headwinds and that starting construction in the midst of this heavy supply would not necessarily be a wise financial decision.

The Applicant noted that other companies have reached similar conclusions regarding the oversupply of apartment units in Washington, DC. Also, the Applicant indicated that multiple publications have taken note of the oversupply of multi-family residential projects in DC. (See, Exhibit 48, Tabs C, D, E, F, G, H, and I.)

As described in the Applicant's January 8th submission and February 10th letter, there are several "other conditions, circumstances, or factors beyond the applicant's reasonable control" (under § 3130.6(c)(3)) in addition to the deferred approval of the Applicant's investment committee and the current state of supply in the market that have contributed to the delay of construction of the Project. These § 3130.6(c)(3) "other conditions" good cause elements are summarized as follows:

- <u>"Merger" of Equity Residential and 60% of Archstone</u> – Since the issuance of the Order, Equity Residential purchased 60% of Archstone, Inc. (with AvalonBay, Inc. purchasing the other 40% of such entity). Equity Residential now owns a significantly larger number of residential multi-family units in the Washington, DC area as the number of units jumped from roughly 12,000 to roughly 19,000. This delayed the ability to embark on the project as the company needed to reassess its projects and properties.

- Physical Constraints Due to Adjacent Construction – The property to the north, 450 K Street, N.W., is currently under construction and utilizes the entirety of the alley at the north of the Property. The developer of such property has a license agreement with the Applicant, attached as Exhibit 48, Tab J, to rent and utilize the Property for staging and storage of construction equipment and materials due to such tight configuration. It would be difficult for both projects to proceed with construction simultaneously and likely result in a greater use of public space than necessary.

- Request for Proposals at Adjacent 5th and I Site – As explained in the Application and more specifically in the February 10th letter (Exhibit 47), the Applicant hopes that the developer is chosen for the adjacent parcel to bring certainty to the condition along that property line. However, as mentioned in the February 10th letter, the Applicant is prepared to proceed with the Project despite the current state of the District's RFP.

Given the totality of the conditions and circumstances described above and in the Application, the Board found that the Applicant satisfied the "good cause" required under the third prong of § 3130.6. Moreover, despite the challenges the Applicant described in its submissions for the extension, the Applicant demonstrated that it has acted diligently, prudently, and in good faith to proceed towards the implementation of the Order. The Applicant has spent considerable funds on plans and construction drawings necessary to apply for a building permit for the Project. The Applicant has paid approximately $2.5 million towards implementation of the Project since the issuance of the Order. The Applicant has applied for its building permit for the Project and has pushed it well into the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") review process. In addition, the Applicant has obtained the necessary public space permits for the Project and has applied for a raze permit. The Applicant has also continued to price the construction costs of the Project with general contractors.

The Board found that the Applicant has met the criteria set forth in 11 DCMR § 3130.6. The reasons given by the Applicant were beyond the Applicant's reasonable control within the meaning of § 3130.6(c)(3) and constitute "good cause" required under § 3130.6(c)(1). In addition, as required by § 3130.6(b), the Applicant demonstrated that there is no substantial change in any of the material facts upon which the Board based its original approval in Order No. 18289. There have also been no changes to the Zone District classification applicable to the Site or to the Comprehensive Plan affecting the Site since the issuance of the Board's order.

The Office of Planning ("OP"), in its supplemental report dated March 6, 2014, reviewed the application for the extension of the Order for "good cause" pursuant to 11 DCMR § 3130.6 and recommended approval of the requested two-year extension. (Exhibit 49.) OP also filed a report dated February 4, 2014 in support of the application. (Exhibit 45.) The Site is within the boundaries of Advisory Neighborhood Commission ("ANC") 6E. According to the OP report of

March 6th, the ANC voted to support an extension at its meeting on February 4, 2014; however, the ANC did not file a written report.

The motion for the 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). No party to the application objected to an extension of the Order. The Board concludes that extension of the relief is appropriate under the current circumstances.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirements of 11 DCMR § 3125.3, which required 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 APPROVAL** of Case No. 18289-A for a two-year time extension of Order No. 18289, which Order shall be valid until **January 20, 2016**, within which time the Applicant must file plans for the proposed project with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

VOTE: **4-0-1** (Lloyd J. Jordan, Anthony J. Hood, S. Kathryn Allen, and Jeffrey L. Hinkle to APPROVE; one Board member, not 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 1, 2014

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