

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18325-B of Renaissance Centro Third Street LLC, pursuant to 11 DCMR § 3130, for a second two-year extension of BZA Order No. 18325.

The original application was pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a variance from the lot occupancy requirements under § 772, a variance from the rear yard requirements under § 774, a variance from the off-street parking requirements under § 2101.1, and a special exception to allow a roof structure with walls of unequal heights under § 411.11, to allow an addition to an existing building in the DD/C-2-C District at premises 704 3rd Street, N.W. (Square 529, Lots 802, 803, 845, and 847).

HEARING DATE (Original Application):	March 20, 2012
DECISION DATE (Original Application):	March 20, 2012
FINAL ORDER ISSUANCE DATE (Order No. 18325):	March 28, 2012
DECISION ON 1ST TIME EXTENSION (Order No. 18325-A):	May 6, 2014
DECISION ON 2ND TIME EXTENSION:	May 10, 2016

SUMMARY ORDER ON 2ND MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 18325

The Underlying BZA Order

On March 20, 2012, the Board of Zoning Adjustment (the "Board") approved the Applicant's request for variances from the lot occupancy requirements under § 772, from the rear yard requirements under § 774, from the off-street parking requirements under § 2101.1, and a special exception to allow a roof structure with walls of unequal heights under § 411.11, to allow an addition to an existing building in the DD/C-2-C District at premises 704 3rd Street, N.W. (Square 529, Lots 802, 803, 845, and 847) (the "Site"). The Applicant sought variance and special exception relief in order to renovate and expand a historic building for use as an apartment building and/or hotel. The Board issued its written order ("Order") on March 28, 2012. Pursuant to 11 DCMR §§ 3125.6 and 3125.9, the Order became final on March 28, 2012 and took effect 10 days later.

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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 28, 2014.¹ (Exhibit 4.)

First Motion to Extend Order for Two Years

On March 27, 2014, the Applicant requested, pursuant to 11 DCMR § 3130.6, the first two-year extension of Order No. 18325, which was due to expire on March 28, 2014. On May 6, 2014, the Board granted a two-year time extension by Order No. 18325-A. That Order was valid until March 28, 2016. (Exhibit 5.) In the first request for a time extension, the Applicant submitted a statement and exhibits including a notarized affidavit from the Applicant's Founder and Principal indicating that the reasons for the request to extend the validity of the order were based on the Applicant's inability to secure the necessary project financing and commitment for the project from a hotel company, despite diligently pursuing these, due to the current overall economic conditions and the current hotel market conditions. While the Applicant encountered some difficulty obtaining project financing, its primary difficulty was from circumstances that were beyond its reasonable control and not easily understood at the time the project was approved, as described in the Applicant's affidavit. (Exhibit 6.)

The Applicant explained that it discovered the extraordinary cost of preserving the historic building after the Board's approval, leading it to seek alternative ways to absorb this cost. The Applicant indicated that it actively pursued both the hotel and residential alternatives for the project, but had been unable to secure the necessary commitments and funding to proceed with either alternative for the project. According to the Applicant, while a hotel is the most viable alternative for absorbing this extraordinary cost, hotel operators thus far had not been willing to commit to this location because of market uncertainties and the unclear status of the Capitol Crossing project across the street. Consequently, the Applicant began to study expanding and modifying to an all-residential project as a possible means to defray the preservation costs, but it needed additional time to make a determination and requested the extension. The Applicant expected either to vest the Order as approved or apply to the Board for approval of modified plans. (Exhibit 6.)

Second Motion to Extend Validity of the Order Pursuant to 11 DCMR § 3130.6

On March 25, 2016, the Applicant sent a letter requesting that the Board, pursuant to 11 DCMR § 3130.6, grant a second two-year extension of Order No. 18325, which was due to expire on March

¹ Subsection 3130.1 states:

No order 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.

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28, 2016. This request for extension is pursuant to § 3130.6 of the Zoning Regulations, which permits the Board to extend 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.

Criteria for Evaluating Motion to Extend

Subsection 3130.6 of the Zoning Regulations authorizes the Board to extend the time periods for good cause provided: (i) the extension request is served on all parties to the application by the applicant, and all parties are allowed 30 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. Pursuant to 11 DCMR § 3130.6(c)(1), good cause is established through the showing of 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.

Pursuant to § 3130.6(a), the record reflects that the Applicant served on all parties to the application and all parties were allowed 30 days to respond. The parties to the original application included the affected Advisory Neighborhood Commission ("ANC") which is ANC 2C (formerly 6C). The extension request also was submitted to the Office of Planning ("OP"). The Applicant stated further that as when the Board approved the project, there are no neighboring properties that would be adversely affected as a result of the relief granted in Order No. 18325. (Exhibit 3.)

Pursuant to § 3130.6(b), the Applicant indicated in its request that there has been no substantial change in any of the material facts upon which the Board based its original approval of the application. (Exhibit 3.)

The Applicant further noted that under the recently adopted 2016 Zoning Regulations, which are due to become effective on September 6, 2016, none of the above variance relief would be required. The Applicant stated that a rear yard is not required for a historic landmark under Subtitle I § 205.3; there is no lot occupancy requirement under Subtitle I § 202; and no parking is required under Subtitle I § 212. Further, under the newly adopted penthouse regulations, the project's non-uniform height penthouse walls are also permitted under § 411.9. Accordingly, the special exception relief is also no longer required. The Applicant stated that the primary purpose of this

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second extension request is to ensure that the project's entitlements are kept in place until the effective date of the 2016 Zoning Regulations.

Under § 3130.6(c), 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.

The Applicant's good cause for delay is based on criteria numbers 1 and 3. The Applicant's prior submission for the first extension request provided a detailed summary of compliance with criteria 1 and 3 for the period of 2012-2014. That submission described in detail the huge preservation costs of the development and the difficulties in the hotel and residential markets particularly given the uncertainty over the timing of the massive Capitol Crossing project right across the street. The Applicant stated that these circumstances have not changed, particularly because the Capitol Crossing project is more than a year away from completion. (Exhibit 6.) In addition, the Applicant submitted a *Washington Business Journal* article on Capitol Crossing to establish good cause. (Exhibit 7.)

In its request for a second extension of the Order, the Applicant indicated that while it is not able to proceed with the project at this time, it is diligently pursuing site preparations, having recently repaired the building façade and is preparing a permit application package to pursue the alterations allowed by the Historic Preservation Review Board.

The Merits of the Request to Extend the Validity of the Order Pursuant to 11 DCMR § 3130.6

The Board finds that the motion has met the criteria of § 3130.6 to extend the validity of the underlying order. To meet the burden of proof, the Applicant submitted supporting documents and information that described its efforts and difficulties either in obtaining a commitment from a hotel company or, alternatively, completing a design for an all-residential project suitable to offset the high preservation costs and commencing construction. Since the Board issued Order No. 18325 in March of 2012, the Applicant has been working diligently to secure the necessary commitments and other approvals to move forward with the project approved by the Board. (Exhibits 3-7.)

Given the totality of the conditions and circumstances described above and in the supplemental information that was provided, 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.

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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. 18325. 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 report dated May 3, 2016, reviewed the application for the second extension of the Order for "good cause" pursuant to 11 DCMR § 3130.6 and recommended approval of the request for a second extension of Order 18325. OP recommended that the Order be extended to the later of September 6, 2016 or the effective date of Zoning Commission Order 08-06A. (Exhibit 8.) The Board in granting the request for a second time extension determined to grant the motion for a two-year time extension as originally requested by the Applicant in the event that the 2016 Zoning Regulations did not become effective on September 6, 2016, as planned.

In reviewing the second extension request, OP noted that between the Order's previous extension and this second request, the 2016 Zoning Regulations were adopted by the Zoning Commission, under which the proposed building massing, siting and use would be permitted by right. OP also noted that since the previous extension there have been significant impacts on the surroundings from work associated with the Capitol Crossing PUD to the east. There has also been a large-scale apartment building completed immediately north of the Applicant's property. OP indicated that the Applicant stated that these do not impact the form of the proposed development directly, but they make obtaining necessary financing more difficult. OP stated that the Applicant has indicated that no changes to the approved development are currently proposed. In support of the good cause element, OP noted that for the previous extension request the Applicant demonstrated good cause, based on the first and third of the above criteria. For this extension request, OP noted that the Applicant resubmitted documentation that supported the first extension request and stated that the short and mid-term transportation and quality-of-life impacts of Capitol Crossing's construction phase had made investors wary of investing in development on the Applicant's site at this time.

The Site is within the boundaries of ANC 2C.² ANC 2C submitted a written report dated May 9, 2016 that indicated that at a regularly scheduled, duly noticed meeting of the ANC at which a quorum was present, it voted 3:0:0 to support the application with two conditions:

1. To improve the conditions of the sidewalk. (The ANC stated that currently, the proposed construction is encroaching on the sidewalk making it hazardous for pedestrians.)
2. The two-year extension may be the limit after which the owner is expected to start construction into Hotel or Residential building. (Exhibit 9.)

In its deliberations on the request for a second time extension, the Board noted that the first condition deals with construction and the second condition will be addressed by the 2016 Zoning Regulations, and therefore determined not to adopt either condition. Nonetheless, the Board

² The Site was in ANC 6C at the time of the underlying approval and Order, but after redistricting, it is now in ANC 2C.

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requested that the Applicant make an effort to resolve the sidewalk construction issue the ANC raised in its 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. 18325-B for a second two-year time extension of Order No. 18325, which Order shall be valid until **March 28, 2018**, 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: **5-0-0** (Marnique Y. Heath, Frederick L. Hill, Anita Butani D'Souza, Jeffrey L. Hinkle, and Robert E. Miller, to APPROVE).

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: May 11, 2016

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.