

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18325-A of Renaissance Centro Third Street LLC, pursuant to 11 DCMR § 3130, for a 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 EXTENSION OF ORDER DATE:	May 6, 2014

SUMMARY ORDER ON 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.

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.

Subsection 3130.1 states:

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO.

18325-A

EXHIBIT NO.

41

Board of Zoning Adjustment
District of Columbia
CASE NO.18325
EXHIBIT NO.41

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.

(11 DCMR § 3130.1.)

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

On March 27, 2014, the Applicant sent a letter and motion request to the Board that requested, pursuant to 11 DCMR § 3130.6, a two-year extension of Order No. 18325, which was due to expire on March 28, 2014. 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. Moreover, the Applicant served on all parties to the application by the applicant, and all parties were allowed thirty (30) days to respond, pursuant to § 3130.6(a).

To establish good cause for the request, 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 are 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 38.)

The Applicant stated that it requested a two-year extension of the Order because of circumstances beyond its control which prevented it from vesting the Order. The Applicant explained that it discovered the extraordinary cost of preserving the historic building after the BZA'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 has been unable to secure the necessary commitments and funding to proceed with either alternative for the project. The Applicant expects, given more time, that it will determine the better of the two options and be able to move forward.

According to the Applicant, while a hotel is the most viable alternative for absorbing this extraordinary cost, hotel operators thus far have 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 has begun to study expanding and modifying an all-residential project as a possible means to defray the preservation costs, but it will need additional time to make a determination and therefore requests the extension. The Applicant noted that recent news articles have demonstrated that there is now more certainty about the Capitol

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Crossing project, and the Applicant intends to re-engage potential hotel operators, but it could not do this in time before the Order was due to expire. The Applicant expects either to vest the Order as approved or apply to the BZA for approval of modified plans. (Exhibit 38.) For the above reasons submitted, the Applicant is requesting a two-year time extension based on demonstrated good cause to extend the validity of the Order.

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.

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 an affidavit and other 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. The Applicant attached a sworn, notarized affidavit from the Applicant's Founder and Principal which described the Applicant's efforts in this regard. (Exhibit 38.)

Given the totality of the conditions and circumstances described above and in the affidavit and other 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

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has acted diligently, prudently, and in good faith to proceed towards the implementation of the Order.

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 April 29, 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 39.) The Site is within the boundaries of Advisory Neighborhood Commission ("ANC") 2C.¹ The ANC did not submit a report with regard to the request for a time extension. The affected ANC at the time had filed a report in support of the underlying Order. (Exhibit 26.)

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-A for a two-year time extension of Order No. 18325, which Order shall be valid until **March 28, 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, Jeffrey L. Hinkle, Marnique Y. Heath, and Robert E. Miller, to APPROVE; S. Kathryn Allen, not present or participating).

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

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

¹ 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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ATTESTED BY:  *for*
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 8, 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.