

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18897-A of Julian Hunt and Lucrecia Laudi, pursuant to 11 DCMR Subtitle Y, § 705.1, for a two-year time extension of BZA Order No. 18897 approving variances from the nonconforming structure requirements under § 2001.3(a)(b)(1) and (2)¹, the lot occupancy requirements under § 403.2, and the rear yard requirements under § 404.1, to allow construction of an addition to an existing single family dwelling and conversion to a flat in the DC/R-4 (RF-2)² District at premises 1504 Swann Street N.W. (Square 191, Lot 817).

HEARING DATES (Original Application):	January 13, February 10, March 24, May 5, and June 16, 2015
DECISION DATE (Original Application):	June 16, 2015
FINAL ORDER ISSUANCE DATE (Order No. 18897):	June 25, 2015
TIME EXTENSION DECISION DATE:	June 7, 2017

SUMMARY ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 18897

The Underlying BZA Order

On June 16, 2015, the Board of Zoning Adjustment (the "Board") approved the Applicant's request pursuant to the Zoning Regulations of 1958 under 11 DCMR § 3103.2, for variances from the nonconforming structure requirements under § 2001.3(a)(b)(1) and (2), the lot occupancy requirements under § 403.2, and the rear yard requirements under § 404.1, to allow construction of an addition to an existing single family dwelling and conversion to a flat in the DC/R-4 (RF-2) District at premises 1504 Swann Street N.W. (Square 191, Lot 817). The Board issued its written

¹ This and all other references to the relief granted in Order No. 18897 are to provisions that were in effect the date the Application was heard and decided by the Board of Zoning Adjustment (the "1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text (the "2016 Regulations"). The repeal of the 1958 Regulations has no effect on the validity of the Board's original decision or the validity of Order No. 18897.

² The zone name has changed as a result of the update of the zoning regulations as described in footnote 1. New zone names went into effect on September 6, 2016. The zone name of the property was DC/R-4 at the time of the original approval and is now RF-2.

BZA APPLICATION NO. 18897-A
PAGE NO. 2

order ("Order") on June 25, 2015. Pursuant to 11 DCMR § 3125.9 (now Subtitle Y § 604.11 of the 2016 Regulations), the Order became final on April 27, 2015 and took effect 10 days later.

Under the Order and pursuant to 11 DCMR § 3130 (now Subtitle Y § 702.1 of the 2016 Regulations), the Order was valid for two years from the time it was issued -- until June 25, 2017. (Exhibits 1 and 3.)

Motion to Extend Validity of the Order Pursuant to 11 DCMR Subtitle Y § 705.1

On April 24, 2017, the Applicant submitted an application for a time extension requesting that the Board grant a two-year extension of Order No. 18897. This request for extension is pursuant to Subtitle Y § 705 of the Zoning Regulations, which permits the Board to extend the time periods in Subtitle Y § 702.1 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

Pursuant to Subtitle Y § 705.1(a), the Applicant shall serve on all parties to the application and all parties shall be allowed 30 days to respond. The record reflects that the Applicant served all parties at least 30 days in advance of the public meeting. The only other party to the original application included the affected Advisory Neighborhood Commission ("ANC") which is ANC 2B. (Exhibit 5.)

Pursuant to Subtitle Y § 705.1(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 5.)

Under Subtitle Y § 705.1(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 stated that there is good cause for the extension due to an eight-month delay in obtaining the building permit from the Department of Consumer and Regulatory Affairs ("DCRA"), necessitating this request for more time to negotiate a loan and bid the project out to contractors before the Order expires. The Applicant requests a two-year extension of Order No. 18897 because additional time is required to bid the project and obtain project financing. To demonstrate good cause, the Applicant submitted evidence to support its claim that the Applicant experienced delays in obtaining the permits at DCRA. (Exhibits 4 and 5.)

BZA APPLICATION NO. 18897-A
PAGE NO. 3

The Merits of the Request to Extend the Validity of the Order Pursuant to 11 DCMR Subtitle Y § 705.1

The Board finds that the motion has met the criteria of Subtitle Y § 705.1 to extend the validity of the underlying order. To meet the requirements of Subtitle Y § 705.1(a), the record reflects that the Applicant served the parties to the application and all parties were allowed at least 30 days to respond. The only parties to the case were the Applicant and ANC 2B. ANC 2B did not submit a report regarding the time extension request. The Office of Planning (“OP”) submitted a timely report recommending approval of the request for the time extension. (Exhibit 7.) No party to the application objected to an extension of the Order.

As required by Subtitle Y § 705(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. 18897. There have also been no substantive 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 that would affect the approval.

To meet the burden of proof for "good cause" required under Subtitle Y § 705.1(c), the Applicant provided a statement and other evidence regarding their efforts to secure the necessary government approvals and the eight-month delay in obtaining a permit. The major delays involved many changes. The project consists of construction of an addition to the single-family house at 1504 Swann Street, N.W. in order to build an addition to the Applicant's primary residence to facilitate "aging-in-place." As part of the original approval, the Board granted variances from the nonconforming structure requirements under § 2001.3(a)(b)(1) and (2), the lot occupancy requirements under § 403.2, and the rear yard requirements under § 404.1 of the 1958 Regulations. The Applicant is seeking the time they need to negotiate a loan and bid the project out to contractors before undertaking construction. (Exhibit 5.)

In evaluating the extension request, the Board considered the Applicant's good faith and diligent efforts to move forward with the approved project on the Property. The Applicant indicated that it has every intention of proceeding with this addition to their residence, as shown by their efforts to respond to various government entities' requests as demonstrated by workflow routing slips attached to the time extension request. (Exhibit 5.) According to the OP report, the Applicant received the Order in June 2015 and submitted building permit plans to DCRA in August of 2016. The permit review process at DCRA took eight months with the building permit (B1611765) being issued in March 2017. The Applicant has indicated that additional time is required to bid the project and obtain project financing. (Exhibit 7.)

Given the totality of the conditions and circumstances described above and in the information that was provided, the Board finds that the Applicant satisfied the “good cause” requirement under Subtitle Y § 705.1(c), specifically meeting the criteria for Subtitle Y § 705.1(c)(2). The Board finds that the delay in securing the necessary governmental approvals is beyond the Applicant's

BZA APPLICATION NO. 18897-A
PAGE NO. 4

reasonable control and that the Applicant demonstrated that it has acted diligently, prudently, and in good faith to proceed towards the implementation of the Order.

OP expressed its support for the project and recommended approval of the requested time extension. OP, in its report dated May 26, 2017, reviewed the application for the extension of the Order for "good cause" pursuant to 11 DCMR Subtitle Y § 705.1, and noted that the Applicant had demonstrated that: (a) the application had been served on ANC 2B with time for the ANC to respond; (b) there had been no substantive change in the Zoning Regulations that would impact the material facts upon which the Board based its original approval; and (c) there have been no recorded changes or significant development project in the square or its immediate surroundings that would impact the Board's original approval. Further, OP noted that the Applicant needed the time extension of the Board's previous approval because the Applicant has not been able to obtain the required project financing or bid out the project due to the delay in obtaining a building permit. OP indicated that it had reviewed the materials submitted by the Applicant and has no objection to the requested two-year time extension. (Exhibit 7.) Having given OP's recommendation great weight, the Board concludes that extension of the approved relief is appropriate under the current circumstances and that the Applicant has met the burden of proof for a time extension under Subtitle Y § 705.1.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

Pursuant to 11 DCMR Subtitle Y § 702, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of Case No. 18897-A for a two-year time extension of Order No. 18897, which Order shall be valid until **June 25, 2019**, 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 (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Peter A. Shapiro, to APPROVE; one Board seat vacant.)

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: June 14, 2017

BZA APPLICATION NO. 18897-A
PAGE NO. 5

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.