

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 18977-A of Weaver Prospect LLC**, pursuant to 11 DCMR Subtitle Y § 705.11, for request for time extension of BZA Order No. 18977 approving relief pursuant to the Zoning Regulations of 1958 under 11 DCMR § 3103.2, for a variance from the off-street loading requirements under § 2201, to allow the construction of a two-story commercial retail center in the C-2-A District at premises 3220 Prospect Street, N.W. (Square 1207, Lots 104, 838, and 839).

<b>HEARING DATE (Original Application):</b>	April 14, 2015
<b>DECISION DATE (Original Application):</b>	April 21, 2015
<b>FINAL ORDER ISSUANCE DATE (Order No. 18977):</b>	April 27, 2015
<b>TIME EXTENSION DECISION DATE:</b>	May 3, 2017

**SUMMARY ORDER ON MOTION TO EXTEND**  
**THE VALIDITY OF BZA ORDER NO. 18977**

The Underlying BZA Order

On April 21, 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 a variance from the off-street loading requirements under § 2201, to allow the construction of a two-story commercial retail center in the C-2-A District at premises 3220 Prospect Street, N.W. (Square 1207, Lots 104, 838, and 839). The Board issued its written order ("Order") on April 27, 2015. Pursuant to 11 DCMR Subtitle Y § 604.11, the Order became final on April 27, 2015 and took effect 10 days later.

Under the Order and pursuant to Subtitle Y § 702.1 of the Zoning Regulations, the Order was valid for two years from the time it was issued -- until April 27, 2017. (Exhibits 1 and 3.)

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<sup>1</sup> The original application was filed under the Zoning Regulations (Title 11, DCMR) which were then in effect (the "1958 Zoning Regulations") but which were repealed on September 6, 2016 and replaced with new text of Title 11, DCMR (the "2016 Regulations"). Other than the description of the original application and its caption, the other references in this Order to provisions contained in Title 11 DCMR are to the 2016 Regulations. The repeal of the 1958 Zoning Regulations and their replacement with the 2016 Regulations has no effect on the vesting and validity of the original application.

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**Board of Zoning Adjustment**  
**District of Columbia**  
**CASE NO.18977A**  
**EXHIBIT NO.6**

**BZA APPLICATION NO. 18977-A**  
**PAGE NO. 2**

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

On March 24, 2017, the Applicant submitted an application for a time extension requesting that the Board grant a two-year extension of Order No. 18977. 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 parties to the original application included the affected Advisory Neighborhood Commission (“ANC”) which is ANC 2E. The extension request also was submitted to the Office of Planning (“OP”). (Exhibit 3.)

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 3.)

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 inability to obtain sufficient project financing due to economic and market conditions beyond the Applicant’s reasonable control. To demonstrate good cause, the Applicant submitted evidence to support its argument that the Applicant has been unable to secure enough tenants to qualify for construction financing, despite diligent outreach efforts. (Exhibits 3 and 3B.)

The Applicant requests a two-year extension of Order No. 18977 for the following reasons: (a) the Applicant cannot submit an application for a building permit until it secures the construction financing for the project; (b) the Applicant has met with three potential lenders and has been informed by each of them that a prerequisite for securing such financing is pre-leasing at least 65% of the retail space to tenants; and (c) despite its diligent efforts to secure tenants for the space, including speaking to approximately 97 potential tenants, the Applicant has not been able at present to satisfy the 65% threshold required for financing. (See, Exhibits 3 and 3B.) The Applicant also noted that the project is now competing with other retail centers, such as City Center and Shaw and others to attract potential tenants, resulting in a longer marketing period. Even so, the Applicant has been successful in retaining some retailers, just not enough to qualify for construction financing. (Exhibits 3 and 3B.)

**BZA APPLICATION NO. 18977-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 2E. OP was also served with the motion. ANC 2E did not submit a report regarding the time extension request. OP submitted a timely report recommending approval of the request for the time extension. (Exhibit 5.) 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. 18977. 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 its efforts to secure the necessary percentage of pre-leased retail tenants in order to secure construction funding for the project. The project consists of construction of a two-story commercial retail center at 3220 Prospect Street, N.W. Currently, the property is used as a surface parking lot. As part of the approval, the Board granted a variance from the off-street loading requirements. The Applicant is seeking to secure a retail tenant or tenants for the Project and to undertake construction as soon as possible.

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 commercial retail center project, as shown by its efforts to market the site to numerous retail tenants, obtaining a broker to handle its marketing efforts, exploring possibilities of expansion and redesign to attract tenants, and contacting three banks to secure construction financing. (Exhibits 3 and 3B.) 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)(1). The Board finds that the delay in securing construction funding is beyond the Applicant's 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 April 22, 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 2E with time for the ANC to respond; (b) there had been no substantive change in the Zoning Regulations that would impact

**BZA APPLICATION NO. 18977-A**  
**PAGE NO. 4**

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 due to economic and market conditions beyond their control. Since the project was approved, the Applicant has made efforts to secure tenants, as documented in the application. While significant outreach has been done and some interest has been expressed, not enough retailers have been secured to qualify for construction financing. The Applicant also noted that competition with other retail centers has elongated the marketing period. The Applicant has indicated that they intend to move forward with the project, and are optimistic that securing lead anchor retailers will result in additional tenants, as needed for financing. (Exhibit 5.) 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. 18977-A for a two-year time extension of Order No. 18977, which Order shall be valid until **April 27, 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: 3-0-2** (Carlton E. Hart, Lesylleé M. White, and Michael G. Turnbull, to APPROVE; Frederick L. Hill, not present or participating; 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:** May 10, 2017

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.