

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18987-A of Pierce Investments LLC, pursuant to 11 DCMR Subtitle Y, § 705.1, for a two-year time extension of BZA Order No. 18987 approving variances from the floor area ratio requirements under §771,¹ and the rear yard requirements under § 774, to allow construction of a five-story multi-family building containing 46 dwelling units in the C-2-A District (now MU-4)² at premises 1124 Florida Avenue N.E. (Square 4070, Lot 808).

HEARING DATE (Original Application):	June 9, 2015
DECISION DATES (Original Application):	June 16 and July 14, 2015
FINAL ORDER ISSUANCE DATE:	July 23, 2015
TIME EXTENSION DECISION DATE:	July 26, 2017

SUMMARY ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 18987

The Underlying BZA Order

On July 14, 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 floor area ratio requirements under §771, and the rear yard requirements under § 774, to allow construction of a five-story multi-family building containing 46 dwelling units in the C-2-A District at premises 1124 Florida Avenue N.E. (Square 4070, Lot 808). The Board issued its written order ("Order") on July 23, 2015, and pursuant to 11 DCMR § 3125.9 (now Subtitle Y § 604.11 of the 2016 Regulations), the Order took effect 10 days later. Pursuant to 11 DCMR § 3130

¹ This and all other references to the relief granted in Order No. 18987 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date the Application was heard and decided by the Board of Zoning Adjustment (the "1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text (the "2016 Regulations").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. 18987.

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 C-2-A at the time of the original approval and is now MU-4.

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(now Subtitle Y § 702.1), the Order was valid for two years from the time it was issued, until July 23, 2017.

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

On June 22, 2017, the Applicant submitted an application for a time extension requesting that the Board grant a two-year extension of Order No. 18987. 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.

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. Pursuant to Subtitle Y § 705.1(b), the Applicant shall demonstrate that there is no substantial change in any of the material facts upon which the Board based its original approval of the application. Finally, 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 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 Office of Planning, ANC 5D, and Srouns Florida Avenue LLC (the prior Property Owner) and all parties were allowed at least 30 days to respond. (Exhibit 3.) The only parties to the case were the Applicant and ANC 5D. ANC 5D did not submit a report regarding the time extension request. The Office of Planning ("OP") submitted a timely report, dated July 14, 2017, recommending approval of the request for the time extension. (Exhibit 6.)

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. 18987. 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 in obtaining a building permit. Specifically, the Applicant provided evidence that it has obtained several permits – including a Raze Permit, Plumbing and Gas Permit, and Foundation Only Permit – and has undertaken other actions such as demolishing the existing building on the Subject Property and submitting plans for review to other D.C. government agencies. (Exhibit 3.)

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Despite its efforts to move forward with the project, the Applicant has indicated that additional time is required in order to obtain a building permit. Accordingly, the Board finds that the delay in securing the necessary governmental approvals 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.

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 a two-year time extension of Order No. 18987, which Order shall be valid until **July 23, 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, Anthony J. Hood, Carlton E. Hart, and Lesylleé M. White 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: August 1, 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.