

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17474-C of ASR Group, Inc. by Metro Properties, Inc., pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 772, and a variance from the residential recreation space requirements under section 773, to allow the construction of a new apartment building in the C-2-A District, at premises 1300 Rhode Island Avenue, N.E. (Square 3956, Lot 801).

HEARING DATE (Orig. Application): May 23, 2006
DECISION DATE (Orig. Application): May 23, 2006
FINAL ORDER ISSUANCE DATE (Orig. Application): June 6, 2006
FIRST MODIFICATION: April 1, 2008
FIRST MODIFICATION ORDER ISSUED: April 2, 2008 (No. 17474-A)
SECOND MODIFICATION: November 3, 2009
SECOND MODIFICATION ORDER ISSUED: November 13, 2009 (No. 17474-B)
DECISION ON MOTION TO EXTEND ORDER: March 2, 2010

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDERS NO. 17474, 17474-A, and 17474-B

The Underlying BZA Orders

On May 23, 2006, the Board of Zoning Adjustment (the Board or BZA) approved the Applicant's request for variance relief from lot occupancy and residential recreation space requirements, to allow the construction of a new apartment building in the C-2-A District. Thus, pursuant to 11 DCMR § 3103.2, the Board granted variances from the lot occupancy requirements under section 772 and from the residential recreation requirements under 773, to allow the construction of an apartment building in the C-2-A District, at premises 1300 Rhode Island Avenue, N.E. (Square 3956, Lot 801). The Order was issued June 6, 2006. (BZA Order 17474).

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A request for approval of a minor modification of plans was approved by the Board in Order No. 17474-A, dated April 2, 2008. Order No. 17474-A became effective on April 12, 2008 and remained effective for two years from the effective date, namely, until April 12, 2010.

Thereafter, a second request for approval of a minor modification of plans was approved by the Board in Order No. 17474-B, dated November 13, 2009. Order No. 17474-B approved the construction of an apartment building containing 263 units and 136 parking spaces pursuant to modified plans. (Exhibit 37, Attachment C – Revised Plans). In Order No. 17474-B, which approved the second redesign of the project, the Board indicated that the second request for a minor modification of plans did not alter the term limit on the Board’s action previously approved and that Order No. 17474-B would remain valid for the same term previously adopted in the first modification order, Order No. 17474-A, that is, until April 12, 2010.

Under the first modification Order, which in this case refers to Order No. 17474-A, and pursuant to § 3130.1 of the Zoning Regulations, the Order was valid for two years from the time it was issued – until April 12, 2010.

Section 3130.1¹ states:

No order [of the Board] 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

On January 13, 2010, the Board received a letter from the Applicant, which requested, pursuant to 11 DCMR §3130.6,² a two-year extension in the authority granted in the underlying BZA Orders, which were due to expire April 12, 2010. (Exhibit 41).

¹ Section 3130.1 was amended by the addition of the phrase “except as permitted in § 3130.6” by the Zoning Commission in Z.C. Case No. 09-01. The amendment became effective on June 5, 2009.

² Section 3130.6 was adopted by the Zoning Commission in Z.C. Case No. 09-01 and became effective on June 5, 2009.

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The Applicant is requesting a two-year extension in the authority granted in the underlying BZA Orders because, due to the deterioration of national and local economic conditions and particularly its effect on the unavailability of credit for new residential and commercial real estate projects, the Applicant has been unsuccessful in obtaining financing to allow the project to proceed. Eight potential lenders and equity investors had indicated that they would be unable to pursue formal arrangements for financing until the building was redesigned and reduced in size so as to reduce construction costs and that there was certainty that the BZA would approve such a redesign. While the Applicant was able to obtain BZA approval of a redesign in Order No. 17474-B, effective November 23, 2009, there remained insufficient time after that approval in which to meet the pending deadline of April 12, 2010 for the filing of a building permit application. To have sufficient time in which to obtain financing and enter into predevelopment work, the Applicant seeks a two-year time extension of that date. The Applicant indicated that he does not have sufficient time to undertake the necessary geotechnical, surveying, environmental, and other engineering work necessary to prepare an application for a building permit during the time period subsequent to the November 23, 2009 effective date of BZA Order No. 17474-B and the April 12, 2010 deadline. Moreover, the Applicant indicates that he believes that he has identified a builder who can deliver the project within the scope of the revised plans approved by the Board in Order No. 17474-B and that the revised project has a good probability of obtaining financing. (Exhibit 41). The extension would allow the Applicant the additional time in which to secure the permits and financing.

Accordingly, the Applicant requested that, pursuant to § 3130.6 of the Regulations, the Board extend the validity of its prior Order for an additional two years, thereby allowing the Applicant additional time to secure financing and apply for a building permit.

Criteria for Evaluating Motion to Extend

The Zoning Commission adopted 11 DCMR § 3130.6 in Zoning Commission Case No. 09-01. The Section became effective on June 5, 2009.

Section 3130.6 of the Zoning Regulations states in full:

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| 3130.6 | The Board may grant one extension of 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; provided, that the Board determines that the following requirements are met: |
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- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
- (b) There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application; and
- (c) The applicant demonstrates that there is good cause for such extension, 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.

(11 DCMR § 3130.6)

The Board finds that the Applicant has met the criteria set forth in this provision. The filing of the motion on January 13, 2010, prior to the expiration date, tolled the effect of the order. The request was served on all the parties to the application and those parties were given 30 days in which to respond under § 3130.6(a). The Applicant's inability to secure the necessary permits and financing and the poor economic conditions in the District constitute the "good cause" required under § 3130.6(c)(1).

As required by § 3130.6(b), there is no substantial change in any of the material facts upon which the Board based its original approval. In requesting this extension of the Order, the Applicant's plans for development of the site would be unchanged from those approved by the Board in its Order dated November 23, 2009 (Exhibit No. 37,

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Attachment C – Revised Plans in the record). There have been no changes to the zone district classification applicable to the property or to the Comprehensive Plan affecting this site since the issuance of the Board's Order.

Neither the ANC nor any party to the application objected to an extension of the Order. The Board concludes that the extension of that relief is appropriate under the current circumstances.

Accordingly, pursuant to § 3130.6 of the Regulations, the Board hereby extends the validity of the underlying Order, for a period not to exceed two years from the current expiration date, thereby establishing a new expiration date of April 12, 2012.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this request for extension of time be **GRANTED** until April 12, 2012.

VOTE: 3-0-2 (Marc D. Loud, Meridith H. Moldenhauer, Nicole C. Sorg to approve; no other Board members participating, nor voting)

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

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

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: MAR 10 2010

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.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN

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APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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As Director of the Office of Zoning, I hereby certify and attest that on March 10, 2010, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:

A handwritten signature in cursive script, reading "Jamision L. Weinbaum", is written over a horizontal line.

JAMISION L. WEINBAUM
Director, Office of Zoning