

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17679-A of Jemal's TP Land and LLC, pursuant to 11 DCMR §3104.1, for special exceptions under sections 353 and 2516, and under section 411 regarding roof structures, to permit the construction of a new residential development (two multiple dwellings, each containing 38 dwelling units) in the R-5-A District at premises 6923-6953 Maple Street, N W and 6916-6926 Willow Street, N W. (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 824, 825, 840 and 843).

HEARING DATE (Orig. Application): November 13, 2007
DECISION DATES (Orig. Application): January 8, 2008 and February 5, 2008
FINAL ORDER ISSUANCE DATE: April 23, 2008
MOTION TO EXTEND DECISION DATE June 22, 2010

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17679

The Underlying BZA Order

On January 8 and February 5, 2008, the Board of Zoning Adjustment (the "Board" or "BZA") approved the Applicant's request for special exceptions under §§ 353 and 2516, and under § 411 regarding roof structures to permit the construction of a new residential development (two multiple dwellings, each containing 38 dwelling units) in the R-5-A District. Thus, pursuant to 11 DCMR § 3104.1, the Board granted special exceptions under §§ 353 and 2516 which authorizes exceptions to building lot control in residence districts to permit the construction of a new residential development in the R-5-A District at premises 6923-6953 Maple Street, N.W. and 6916-6926 Willow Street, N.W. (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 824, 825, 840 and 843) The Order was issued April 23, 2008. (BZA Order 17679).

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 April 23, 2010.

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17679-A Board of Zoning Adjustment
District of Columbia
EXHIBIT NO. 52 CASE NO. 17679
EXHIBIT NO. 52

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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).

Waiver of 30-day filing requirement pursuant to 11 DCMR § 3130.9

The Applicant first filed its request for a time extension on April 6, 2010, approximately three weeks prior to the expiration of Order No. 17679 on April 23, 2010 (Exhibit 48). At its special public meeting on May 11, 2010, the Board granted the Applicant permission to file supplemental information by May 18, 2010 and to address the waiver of the 30-day filing requirement, pursuant to § 3130.9. Subsection 3130.9 says: “A request for a time extension filed at least thirty (30) days prior to the date upon which an order is due to expire shall toll the expiration date for the sole purpose of allowing the Board to consider the request.” 11 DCMR § 3130.9.

On May 17, 2010, the Applicant filed a letter with the Board, dated May 11, 2010, that contained a request to waive § 3130.9 of the Zoning Regulations to accept the Applicant’s time extension motion that, with the supplemental information being filed, was completely filed less than 30 days prior to the expiration of the underlying order and to toll that order’s expiration (Exhibit 50). In its May 11, 2010 letter to the Board, the Applicant stated that due to dramatic reductions in staffing resulting from the weakened economy and its inability to timely verify key information relied upon in its affidavit supporting the extension request, the Applicant was unable to file its completed request for an extension at least 30 days prior to the order’s expiration. The Applicant indicated that no one was prejudiced by the delay in filing (Exhibit 50). At its June 22, 2010 meeting, the Board, by consensus, approved the waiver of the 30-day filing requirement.

Motion to Extend Time

On May 17, 2010, the Board received a letter from the Applicant, dated May 11, 2010, which included the April 6, 2010 letter and additional supporting documentation and

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

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which requested, pursuant to 11 DCMR § 3130.6,² a two-year extension in the authority granted in the underlying BZA Order, which was due to expire April 23, 2010. (Exhibit 50)

The Applicant is requesting a two-year extension in the authority granted in the underlying BZA Order because, due to the deterioration of the real estate market in Washington, D.C., the frozen credit markets, and the continuing economic crisis these have caused, the Applicant has been unable to obtain the necessary financing commitment to begin the project, despite attempts to obtain financing for the project ever since the Board originally approved it. To meet its burden of proof, the Applicant provided a signed and notarized affidavit which indicated that the Applicant has diligently sought financing and attempted to move forward with development of the site since the time of the BZA's original approval. The Applicant noted that while the latest reports suggest that the multi-family housing sector may be starting to stabilize, the economy is not expected to rebound prior to the time when the underlying BZA Order was due to expire. (Exhibit 50, Exhibit B)

The Applicant filed a letter, dated May 13, 2010, with the Board which had been sent to the Chair of the Advisory Neighborhood Commission ("ANC") 4B, which is the affected ANC, and to the other party in the case, Mr Jack Werner, notifying them of the Applicant's motion for a two-year time extension and sharing all the documentation in support of that motion with them. (Exhibit 50) There was no response to the Applicant's motion filed from any party in the case or the Office of Planning ("OP"). The project is within the boundaries of ANC 4B. ANC 4B did not file a report.

According to the Applicant, the reasons for its request to the Board to extend the time of the Order are because of its inability to secure financing for the project due to the prevailing unstable economic and real estate market conditions, both locally and nationally. The Applicant stated that it has aggressively pursued financing options for the project without success because of the continuing economic real estate crisis. The Applicant noted that while it was anticipated that the markets for existing residential products may begin to stabilize in future and the credit crunch for new multi-family construction may lessen, these improved conditions were not expected to occur prior to the expiration of the above-mentioned order. In addition, the Applicant indicated that the plans approved for the development of the site and other material facts are unchanged from those approved by the Board in its Order issued on April 23, 2008. The extension would allow the Applicant the necessary additional time in which to secure financing. Accordingly, the Applicant requested that, pursuant to § 3130.6 of the Regulations, the

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

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:

- 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:
- (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)

As discussed herein, pursuant to 11 DCMR § 3130.9, for a request for a time extension to toll the expiration date of the underlying order for the sole purpose of allowing the Board to consider the request, the motion must be filed at least 30 days prior to the date on which an order is due to expire. Although the Applicant filed its request with the supplemental information on May 17, 2010, which was less than the required 30-day period for tolling, the Applicant presented reasons, as described above, for its delay in filing its motion and the supporting documents. By consensus, pursuant to § 3100.5, the Board granted the Applicant's request for flexibility and tolled the effect of the underlying Order.

Also, the Board found that the Applicant has met the criteria set forth in § 3130.6. The motion for a 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). The Applicant's inability to secure the necessary 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 April 23, 2008 (Exhibits No. 27 and 42 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 23, 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

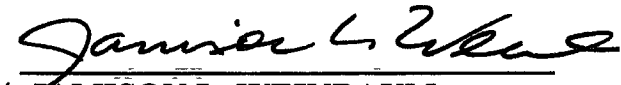
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conclusions of law. It is therefore **ORDERED** that this request for extension of time be **GRANTED** until April 23, 2012

VOTE ON WAIVER MOTION: 3-0-2 (Meridith H. Moldenhauer, Shane L. Dettman, Nicole C. Sorg, to approve; no other Board members participating, nor voting)

VOTE ON TIME EXTENSION MOTION: 4-0-1 (Shane L. Dettman, Meridith H. Moldenhauer, Nicole C. Sorg, Michael G. Turnbull (by absentee ballot) to approve; no other Board member (vacant) 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: JUN 29 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 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.