

Holland & Knight

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D.C. OFFICE OF ZONING

2012 APR 20 PM 3:43

April 20, 2012

Leila M Jackson Batties
202 419 2583
leila.batties@hklaw.com

Hand Delivery

District of Columbia
Board of Zoning Adjustment
441 4th Street, NW - Suite 200 South
Washington, DC 20001

Re: Request for Two-Year Extension of Order Nos 17679 and 17679-A
6923-6953 Maple Street, NW and 6916-6926 Willow Street, NW
Square 3357, Lots 26-28, 29, 40, 808, 811, 814, 815, 818-820, 824, 825, 840 and 843
(the "Property")

Dear Members of the Board:

This letter is submitted on behalf of Jemal's TP Land, LLC, an affiliate of Douglas Development Corporation (the "Applicant"), to request a two-year extension of the effectiveness of the Order of the Board in BZA Application Nos 17679 and 17679-A (collectively, the "Order"), copies which are attached at Tab A and Tab B to this letter, respectively. Order No. 17679 was final on April 23, 2008; Order No. 17679-A was final on April 23, 2010. A check made payable to the D.C. Treasurer in the amount of \$8,632.00, which is 26% of the original filing fee* as required by §3180 1(f), Form 126, the BZA Fee Calculator, and the Applicant's Authorization Letter are enclosed with this request.

This extension is requested pursuant to §3130.6 of the Board's rules, which allows the Board to grant a two year extension of the time periods set forth in §3130 1 for good cause shown.

As set forth below, there is good cause shown for this request. Moreover, the Applicant is not proposing to change the Board-approved plans for the Property, which depict a residential development consisting of two multifamily buildings containing 38 units each (the "Project").

Compliance with Section 3130.6, et seq

Pursuant to §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 30 days to respond;

* The original filing fee for the application was \$33,200.00

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17679-A

EXHIBIT NO. 54

Board of Zoning Adjustment
District of Columbia
CASE NO. 17679
EXHIBIT NO. 54

- (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 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

In accordance with the Zoning Regulations, a copy of this extension request has been served on the parties listed in Tab C to this letter, who appeared and participated in the public hearing on the underlying application. They will have at least 30 days between the date of receiving a copy of this request and the Board's review of the application to respond to this request. Second, in requesting this extension of the Order, the Applicant's plans for development of the Property have not changed from what was approved by the Board in its Order dated April 23, 2008. There have been no changes to the zone district classification or to the Comprehensive Plan applicable to the Property since the issuance of the Board's Order. Third, as has been well documented in the media, over the last four years, the real estate market has significantly deteriorated and the economy has declined into a state of recession, conditions beyond the Applicant's control. The affidavit in Tab D explains in detail the Applicant's inability to finance the construction of the Project. As you are likely aware, the situation is not unique to the Applicant. Many projects approved during the same time frame as the Applicant's project have been delayed or stopped altogether because of the dire market conditions, particularly those in challenging submarkets such as Takoma.

The Zoning Regulations further provide in § 3130.7 that a time extension granted pursuant to § 3130.6 shall not exceed two years, or one year for an Electronic Equipment Facility. The requested extension is for a period of two years, the same as that given for the original approval and the first extension.

Waiver Requests

The Applicant seeks a waiver of Section 3130.9 of the Zoning Regulations, which, for extension requests filed at least thirty (30) days prior to the date an order is due to expire, tolls the expiration date of the Order for the sole purpose of allowing the Board to consider this request. Section 3100.5 of the Zoning Regulations provides that "[e]xcept for §§ 3100 through 3105, 3121.5 and 3125.4, the Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise

prohibited by law." Sections 3100 through 3105, 3121.5 and 3125.4 do not apply to extension requests, and thus the Board has legal authority to waive the 30-day provision and toll the expiration date of the Order for the sole purpose of allowing the Board to consider this request.

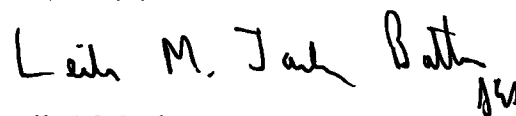
The Zoning Regulations do not preclude the Applicant from filing this extension request within 30 days of the expiration of the Order. Once made aware of the impending expiration, the Applicant researched the loan documents and financing restrictions related to the Property. This was not an insignificant task -- taking considerable time -- due to Douglas Development's extensive real estate portfolio. The waiver of the 30-day provision does not prejudice the District or the parties to the original application

The Applicant is also seeking a waiver of the provision in §3130.6 that only one extension can be granted. Section 3100.5 of the Zoning Regulations provides that "[e]xcept for §§ 3100 through 3105, 3121.5 and 3125.4, the Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law." Sections 3100 through 3105, 3121.5 and 3125.4 do not apply to extension requests, and thus the Board has legal authority to waive the provision of §3130.6 regarding the granting of only one extension request

The Applicant requests that the BZA exercise the discretion granted by §3100.5 in this case. As the Applicant stated in its affidavit, the Applicant is unable to obtain financing for the construction of the Project. The Applicant is not benefitted in any way by delaying development of the property. There would be no benefit to the District, the neighborhood or the Applicant to depriving the Applicant of additional time to develop the Project. Granting the waiver would be in the interest of administrative efficiency for the BZA and the community

We believe that the facts herein provide a sufficient basis under §§3100.5 and 3130.6, et seq., for the Board to grant the requested extension and we respectfully request that the Board do so.

Very truly yours,



Leila M. Jackson Batties

LMJB:lsn
Enclosures

THIS CHECK IS VOID WITHOUT A BLUE BACKGROUND AND AN ARTIFICIAL WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

Douglas Development Corporation
DDC Operating Account
702 H Street, NW
Suite 400
Washington, DC 20001

Eagle Bank
7815 Woodmont Avenue
Bethesda, Maryland 20814

65-329
550

Date	Check No	Check Amount
4/19/2012	224242	\$8,632.00

Eight Thousand Six Hundred Thirty Two AND 00/100 Dollars

Pay to the order of

DC Treasurer

VOID IF NOT CASHED WITHIN 180 DAYS WITHIN DATE OF ISSUE

BZA # 17679-A
17679-A



SIGNATURE HAS A COLORED BACKGROUND - BORDER CONTAINS MICROPRINTING



**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**



FORM 126 – BOARD OF ZONING ADJUSTMENT FEE CALCULATOR

Per §3180 of the Zoning Regulations, at the time of the filing of an application or an appeal with the Board of Zoning Adjustment, the applicant or appellant shall pay a filing fee in accordance the fee calculator below. In the case of an application combining two (2) or more actions, or for an application requesting consideration of more than one alternative, the fee shall be the total of the amounts for each action or alternative computed separately. However, for applications involving owner-occupied, one-family dwellings or flats, regardless of the number of variances, special exceptions, or alternatives requested, the fee is three hundred and twenty-five dollars (\$325.00). A department, office, or agency of the Government of the District of Columbia shall not be required to pay a filing fee where the property is owned by the agency and the property is to be occupied for a government building or use.

APPLICATION OR APPEAL TYPE: VARIANCE:	FEE	UNIT	TOTAL
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Owner-Occupied Dwelling	\$325		
All Other Variances Per Section Requested	\$1,040		

TOTAL FOR VARIANCES:

SPECIAL EXCEPTION:	FEE	UNIT	TOTAL
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Parking Lot/Garage/Accessory Parking (per space)	\$104		
Child Development Center (per student)	\$33		
Private School (per student)	\$33		
Residential Under §353	\$520		
CBRF (per person)	\$104		
Office Use in SP (per 100 square feet)	\$52		
Roof Structures	\$2,600		
Hotel or Inn in SP (per room or suite)	\$104		
Gasoline Service Station	\$5,200		
Repair Garage	\$1,560		
Home Occupation	\$1,560		
Accessory Apartment Under §202	\$325		
Theoretical Lot Under §2516	\$1,560		
Additional Theoretical Lot Under §2516	\$520		
Recycling Facility Under §802	\$5,200		
Antenna Under §211	\$2,600		
Any Other Special Exception	\$1,560		
Chancery (per 100 square feet)	\$65		
Owner-Occupied Special Exception	\$325		
Time Extension/Modification – Owner Occupied	\$130		
Time Extension/Modification – All other (percentage of filing fee)	26%	\$33,200.00	\$8,632.00

TOTAL FOR SPECIAL EXCEPTIONS:

APPEAL:	FEE	UNIT	TOTAL
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NCPC/ANCs/Citizens Association/Civic Association/Not-for-Profits	\$0		
All other organizations, groups or persons	\$1,040		

TOTAL FOR APPEALS:

GRAND TOTAL:

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this application/petition is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both. (D.C. Official Code § 22-2405)

Name: Leila M. Jackson Batties	Signature: <i>Leila Batties</i>
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Exhibit No. _____	Last Revised (10/18/10)	Case No. _____
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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17679
EXHIBIT NO. 12

D.C. OFFICE OF ZONING

BOARD OF ZONING ADJUSTMENT
WASHINGTON, D.C. 20001

RECEIPT

BZA CASE NO. 17679 CHECK NO. 008857
Name Douglas Development Co. (DATE) 6-11-07
Address 702 H St, N.W. Amount \$ 33,200.00

DESCRIPTION

Application of Semalis TP Land LLC for a special
exception to construct a new residential development
and a special exception to relocate two or more
principal buildings or structures at 6923-6953
Maple St., N.W. and 6916-6926 Willow St., N.W. Lots
86-89, 40, 800, 811, 814, 815, 818, 819, 820, 824, 825, 840 and 843,
3357 AVE 4B

April 19, 2012

D.C. Board of Zoning Adjustment
441 Fourth Street, N. W.
Suite 220 South
Washington, D C 20001

Re: BZA Extension Request – Application No Order Nos. 17679 and 17679-A

Honorable Members of the Board

As owner of the property at Square 3357, Lots 26 - 28, 29, 40, 808, 811, 814, 815, 818-820, 824, 825, 840 and 843 (6923-6953 Maple Street, NW, and 6916-6926 Willow Street, NW) this letter is to authorize the law firm of Holland & Knight LLP to act as our authorized agents regarding the request for a two-year extension of the effectiveness of the Order of the Board in BZA Application Nos. 17679 and 17679-A As set forth in section 3106.1 of the Zoning Regulations, this authorization includes the power to bind the owner in the case before the Board.

Very truly yours,

JEMAL STEP LAND, LLC



Douglas Jemal, Managing Member

Tab A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17679 of Jemal's TP Land 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: November 13, 2007
DECISION DATES: January 8, 2008 and February 5, 2008

DECISION AND ORDER

On June 11, 2007, Jemal's TP Land LLC (the "Applicant"), the owner of the property that is the subject of this application (the "subject property"), filed an application with the Board of Zoning Adjustment (the "Board") pursuant to 11 DCMR § 3104.1 for special exception relief pursuant to Sections 353, 411, and 2516 of the Zoning Regulations to allow the construction of a new residential development (two multiple dwellings, each containing 38 dwelling units) in the R-5-A District on the subject property. The Board held a public hearing on the application on November 13, 2007. After the hearing, the record was closed, except to allow submission of a revised landscape plan from the Applicant and proposed orders from the Applicant and the party in opposition.

The Board received the requested post-hearing submissions and, at its public meeting on January 8, 2008, voted 3-0-2 to approve the application.

PRELIMINARY MATTERS

Self-Certification The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3114.2.

Notice of Application and Notice of Public Hearing By memoranda dated June 13, 2007, the Office of Zoning sent notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Departments of Transportation and Housing and Community Development, the Deputy Mayor for Education, Advisory Neighborhood Commission ("ANC") 4B, the ANC within which the subject property is located, the Single Member District member for 4B07, and the Council Member for Ward 4. Pursuant to 11 DCMR § 3113.1, notice of the hearing was

BZA APPLICATION NO. 17679

PAGE NO. 2

published in the *D C Register* and sent to the Applicant, all individuals and entities owning property within 200 feet of the subject property, ANC 4B, and OP. The Applicant posted placards at the subject property providing notice of the public hearing and submitted an affidavit to the Board to this effect (Exhibit 40)

Request for Party Status The Board received an opposition Party Status request from Mr. Jack Werner, who resides at 6908 Willow Street, N W (Exhibit 26). Mr. Werner indicated that he and a number of other neighbors would be affected by the application for the following reasons: a) potential flooding, b) traffic and street parking; c) an absentee landlord, d) crowding of existing homes and noise, and e) loss of green space. The Board found that Mr. Werner, who lives within 200 feet of the project, would be more significantly affected by the proposed development than those in the general public and therefore granted his request for party status. However, during the course of his testimony, Mr. Werner agreed that the Applicant met all of the legal requirements for the requested zoning relief, and that most of his concerns would be dealt with during the permitting process (T p 194, 196)

Other Persons in Opposition/Support The Board heard testimony in support of, and in opposition to, the application. Two individuals testified in support of the application, and two individuals testified in opposition to the application.

The Applicant's Case The Applicant presented testimony from Paul Millstem of Douglas Development Corporation, an expert in urban development and historic renovation, George Myers of GTM Architects, an expert in urban residential architecture, Steven E. Sher of Holland & Knight LLP, an expert in zoning and land use planning, and Huy Tran of Kimley-Horn and Associates, Inc., an expert in civil engineering and stormwater management design. The Applicant also submitted a memorandum prepared by O.R. George & Associates, Inc., experts in traffic engineering and transportation planning (Exhibit 39)

Office of Planning (OP) Report OP submitted a report on November 5, 2007, marked as Exhibit 29 of the record, indicating that OP supported the proposed redevelopment of the subject property and recommending that the Board approve the requested special exceptions. Pursuant to the requirements of Section 353, OP opined that the site plan, arrangement of buildings and structures, as well as the provision of parking, recreation, landscaping, and grading, as they relate to the future residents of the project and the surrounding area, would have a positive impact on the immediate neighborhood. OP also analyzed the requirements of Section 2516 and indicated that the Applicant met its burden of proof with respect to each required element for approval of special exception relief to permit the construction of two or more principal buildings or structures on a single subdivided lot. With respect to the requested roof structure relief, OP recommended that the requested relief relating to setbacks (§ 411.2), more than one enclosure (§ 411.3), and enclosures of unequal heights (§ 441.5) should be granted since the proposed roof structures comply with the intent of the Zoning Regulations, would not hinder the light and air of adjacent property owners, and their location and design minimized their massing and visibility.

BZA APPLICATION NO. 17679
PAGE NO. 3

District Department of Housing and Community Development ("DHCD") Report

DHCD submitted a report, dated November 5, 2007 and marked as Exhibit 30 of the record, indicating that DHCD reviewed the application and supported the requested special exceptions.

District Department of Transportation ("DDOT") Report DDOT submitted a report, dated November 7, 2007 and marked as Exhibit 41 of the record DDOT supported the application and indicated that the development will not have an adverse traffic impact on the neighborhood

ANC 4B Report ANC 4B was automatically a party to this application. The ANC filed a letter and resolution, dated November 5, 2007 and marked as Exhibit 31 of the record, indicating that, at its regularly scheduled, properly-noticed meeting on October 25, 2007, with a quorum present, it voted 6-2 in support of the application

FINDINGS OF FACT

Background

1. The subject property consists of Lots 26-29, 40, 808, 811, 814, 815, 818-820, 824, 825, 840 and 843 in Square 3357.
2. The subject property is located in the center of the block bounded by Maple, Willow and Carroll Streets and Sandy Spring Road, N.W The subject property has approximately 420 feet of frontage on Maple Street and approximately 407 feet of frontage on Willow Street.
- 3 The subject property has a land area of approximately 101,879 square feet
4. The northern end of the property is currently improved with 3 detached single family dwellings and a commercial parking lot which serves a building to the north, which is not located on the property. The remainder of the property is vacant
- 5 The subject property is zoned R-5-A and is also located within the Takoma Park Historic District

The Applicant's Proposed Project

- 6 The Applicant seeks to develop the subject property with two new multiple-dwelling buildings, each containing 38 dwelling units. Each building will be three stories with a maximum height of 40'-0" as measured from the finished grade level at the middle of the front of each building to the ceiling of the top story Each building contains approximately 41,631 square feet of gross floor area.

BZA APPLICATION NO. 17679
PAGE NO. 4

- 7 The three existing single family dwellings currently on the property will be renovated and relocated to new lots at the south end of the site. Each of these dwellings will be provided with off-street parking.
- 8 Seventy-six surface parking spaces will be provided within the development.
9. Vehicular access from both Maple and Willow Streets will be provided at the northern end of the site via a 25-foot wide drive aisle, which will not encroach into any of the required yards
- 10 The project also includes a bicycle storage area with 20 stalls.
11. Each proposed multi-family building includes a zoning-compliant loading dock and zone, as well as a trash room.
- 12 Each proposed multi-family dwelling will provide rooftop recreation space
13. The southern portion of the lot is shielded from the neighbors' view by screening and closely-planted evergreens.
14. The project includes a combined total of approximately 25,611 square feet of green space around the multi-family buildings
- 15 The design of the new multi-family buildings incorporates details from traditional Washington, D C. apartment buildings from the early part of the 20th century. A belt course and decorated cornice line are included to visually reduce the mass of the buildings
16. Both buildings are parallel to the street which they front (*i.e.*, Maple Street, N W and Willow Street, N W) and are set back about 20 feet from the curb. This setback is consistent with the established building line of the adjacent houses on Maple and Willow Streets.

Special Exception Under Section 353 for New Residential Development in R-5-A District

17. Pursuant to § 353.1 of the Zoning Regulations, in R-5-A Districts, the Applicant's proposed project must be reviewed by the Board as a special exception under § 3104 in accordance with the standards and requirements in § 353
18. These requirements either pertain to agency referrals to be made by the Board or submissions to be made by the Applicant, all of which have been complied with.

Special Exception from Roof Structure Requirements of Section 411

- 19 The Board may grant special exception relief from the strict requirements for a roof

BZA APPLICATION NO. 17679
PAGE NO. 5

structure where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and where such compliance would be "unduly restrictive, prohibitively costly, or unreasonable." 11 DCMR §411.11. Also, deviations from the roof structure requirements may not materially impair the intent and purpose of the Zoning Regulations and may not adversely affect the light and air of adjacent buildings Id

- 20 The Applicant is seeking roof structure relief because the project incorporates multiple roof structures (§411 3), the roof structures will not be set back from all exterior walls a distance equal to their height above the roof (§411 2), and one of the roof structures will have walls of varying height (§411 5)
- 21 The Applicant proposes to provide a stair tower enclosure near the front façade of each building with a height of 9 feet, and a larger stair/vestibule/storage/elevator override enclosure in the center of the roof that measures 9 feet, but steps up to 15 feet, 6 inches at the portion enclosing the elevator override The larger enclosure meets the setback requirements on all sides, except the interior parking lot side. Likewise, the stair tower enclosure near the front façade of each building meets the setback requirements on the street side, but not on the loading dock side since, on that side, it is located at the roof edge

Relief from Set Back Requirement

- 22 The Applicant requests relief from § 411 2 of the Zoning Regulations, which requires that roof structures be set back in accordance with the provisions of the zone district in which the Project is located. The R-5-A District requires a roof structure to be set back from the building's walls a distance at least equal to the roof structure's height above the roof on which it is located
- 23 A separate stair tower enclosure must be provided because the Building Code mandates that when residential recreation space is located on the roof of a building, a separate stairwell that leads to the bottom of the building must also be located on the roof. The Building Code also recommends that stair towers be located at the extreme end of a corridor Thus, the placement of this tower and its resulting setback noncompliance is based on the building code and the internal configuration of the building
- 24 Both roof structures are properly set back from the street-facing facades of the multiple-dwelling buildings

Relief from Roof Structure Enclosure Requirement

- 25 Section 411 3 requires that all penthouses and mechanical equipment be placed in one rooftop enclosure The Applicant's design calls for two penthouses

BZA APPLICATION NO. 17679

PAGE NO. 6

- 26 Due to the provision of rooftop recreation space, a separate stairwell leading to the bottom floor of the building, and preferably located near the end of a corridor, must lead to the roof. See, Finding of Fact No 23 The other penthouse is necessary for the additional stair tower and elevator override, for providing access to the roof, and to break up massing on the roof.

Relief from Walls of Equal Height Requirement

- 27 The Applicant requests relief from section 411 5 of the Zoning Regulations, which requires the enclosing walls of a penthouse to be of equal height. The project incorporates two different enclosing wall heights on the stair/vestibule/storage/elevator override roof structure.
28. Due to the provision of rooftop recreation space, the building code requires that all accessible levels be served by an elevator, which results in an elevator override.
- 29 The portion of the enclosure over the elevator override steps up to 15 feet, 6 inches in order to fully enclose the override, while the walls of the stair tower, vestibule and storage portion of the enclosure have a height of only 9 feet. Therefore, approximately 88% of the roof structure has a height of 9 feet, and the remaining 12% has a height of 15 feet, 6 inches.
- 30 The entire elevator override enclosure could be 15 feet, 6 inches high, but the step down in height reduces the visibility of the roof structure from the surrounding areas.

Special Exception for Theoretical Building Sites (§2516)

31. Although the three single-family dwellings currently on the property will be re-located and established on individual lots, the two multifamily buildings proposed will be constructed on a single lot
32. Each of these multifamily buildings is a principal building located in a Residence Zone, which, without relief, would require its own lot. 11 DCMR § 3202.3.
33. Pursuant to §§ 2516 1 and 3104 of the Zoning Regulations, the Board has the authority to grant relief to permit the construction of two or more principal buildings or structures on a single subdivided lot
- 34 All submission and referral requirements mandated by § 2516 have been met. See, 11 DCMR §§ 2516.3 and 2516.10.
- 35 The property is located in an R-5-A District and, other than the relief approved herein, meets all the applicable zoning requirements of that District See, 11 DCMR 2516.2 and 2516 4

BZA APPLICATION NO. 17679

PAGE NO. 7

36 The height of the two proposed multifamily buildings is being measured from the finished grade at the middle of the front of each building *See*, 11 DCMR 2516.7.

37 All applicable requirements with respect to ingress and egress have been complied with, as illustrated by the plans in the record, particularly Exhibit No. 27, Attachment C, Architectural Plans, at Sheet A101 *See*, 11 DCMR § 2516.6

CONCLUSIONS OF LAW

Pursuant to section 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in the judgment of the Board, the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of §§ 3104 and 353, the Applicant also had to meet the requirements of § 411.11 for the requested roof structure special exceptions, and those of § 2516 for the project as a whole.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, "[t]he Board's discretion is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

Roof Structure Relief

Pursuant to § 411.11 the Applicant is asking the Board to "approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6." A penthouse, such as the two at issue in this application, is among the two types of structures regulated by those three subsections. The subsections regulate the "number" of penthouses, by permitting only one, § 411.3, and the design of penthouses, by requiring "enclosing walls from roof level shall be of equal height," § 413.5. The Applicant is seeking special exception approval of two penthouses, one of which will have uneven walls. Also, because the penthouses will not meet the 1:1 setback requirement of § 400.7, which applies to the structures by virtue of § 411.2, the Applicant seeks a special exception from this "location" requirement.

Subsection 411.11 authorizes special exceptions from these location, design, and number restrictions where meeting the restriction is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable."

BZA APPLICATION NO. 17679
PAGE NO. 8

The need to have two penthouses arises from the Building Code's requirement that when residential recreation space is located on the roof of a building, a separate stairwell that leads to the bottom of the building must also be located on the roof. In addition, a single monolithic structure spanning almost the entire roof is contrary to sound design principles and would likely have a greater adverse effect on the light, air, and view of the neighbors. The Applicant's inability to set back these penthouses on a 1:1 basis from the side walls is a result of its desire to comply with the Building Code's recommendation that this stairwell be placed at the extreme end of a corridor. Further, both roof structures will meet the required setbacks from the street sides of the buildings, thus achieving the goal of largely removing them from view from the street.

The last roof structure special exception, for walls of unequal height on one of the structures, also arises out of an attempt to create a more sound and pleasing design. Approximately 12% of the larger of the two roof structures will be 15 feet, 6 inches high to enclose the elevator override, but the other approximately 88% will be stepped down to a height of 9 feet because it does not enclose the taller elevator override. The Board concludes that it would be contrary to the intent of the Zoning Regulations to force the Applicant to make the entire structure 15 feet, 6 inches high, resulting in a much larger and more intrusive structure.

Special Exception for New Residential Development in an R-5-A District with More than One Principal Building on a Single Lot

The Applicant also requests special exceptions pursuant to §§ 353 and 2516. Section 353 applies to all new residential development in R-5-A Districts, except one-family detached and semi-detached dwellings, and sets forth both the referral requirements for this Board and the types of plans to be submitted to the Board by the Applicant. It does not, however, set forth any specific criteria to be met by the application. Those criteria are to be found, generally, in § 3104.

In addition, the Applicant is seeking to construct the two new buildings on a single record lot pursuant to § 2516, which includes specific criteria that must be, and in this case, have, been met.

The project will comply with the substantive provisions of Title 11 (§ 2516.9) and as required by § 2516.6, there are two means of ingress and egress to the site, both 25-feet wide and not included in any required yard. See, Findings of Fact Nos. 10 and 42, and Exhibit cited in latter.

Contrary to the claims of the opposition, the Board concludes that the project will not have an adverse effect on the present character and future development of the neighborhood (§§ 2516.9 and 3104) and is in harmony with the Zoning Regulations and Zoning Maps (§ 3104). The primary concerns raised by the party in opposition to the application were increased density and the massing of the buildings on the site, leading to a loss of open space, storm water management

BZA APPLICATION NO. 17679

PAGE NO. 9

and drainage, increased traffic and parking problems, inadequate landscaping, inadequate community input, and the effect of an absentee landlord and a transient population.¹

As the site is now a large swath of undeveloped land except for the three single-family dwellings to be relocated by the Applicant, any development would result in some loss of open space. The density and massing of the proposed development, however, are consistent with the type of development permitted in an R-5-A District, and preserve some open space while also bringing more residential units to the neighborhood. The building height, floor area ratio, and lot occupancy are within those permitted in this R-5-A District. Sufficient open space is being provided around both multiple dwellings, and their fronts are set back 20 feet from the curb to maintain consistency with the established building line of adjacent dwellings.

Landscaping and storm water management issues have been sufficiently addressed by the Applicant as shown in the record. The Applicant revised its landscape plan after the hearing in consultation with community members, resulting in improved buffering between the project and existing residences. See, Exhibit No 42. OP, whose task it is to assess water supply issues, pursuant to § 2516.10, opined that existing water and sewer lines have sufficient capacity to handle the demand generated by the project. Further storm water management issues will be addressed at the building permit stage, and are not within the Board's purview.

Nor does the Board conclude that the traffic and parking needs generated by the project will result in adverse impact on the neighborhood. The project will provide adequate parking on-site and, according to the DDOT Report, there is also on-street parking available in the neighborhood. DDOT also notes that existing traffic volume on the adjacent streets is low, and the Board concludes that any traffic increase arising out of the development of the project will readily be absorbed.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations of the Office of Planning. D.C. Official Code §§ 1-309 10(d) and 6-623 04 (2001). Great weight means acknowledgment of the issues and concerns of those two entities and an explanation of why the Board did or did not find their views persuasive. The Office of Planning and ANC 4B both recommended approval of the application. The Board agrees that the Applicant has carried its burden of proof in meeting the requirements for special exception relief and accords the recommendations of OP and ANC 4B the deference to which they are entitled.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to an application 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

¹The latter concerns, an absentee landlord and a transient population, are not zoning issues, and therefore, not within the Board's jurisdiction.

BZA APPLICATION NO. 17679
PAGE NO. 10

Willow Street, N.W. (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 824, 825, 840 and 843).

Accordingly, it is therefore **ORDERED** that the application be **GRANTED** in accordance with the architectural plans and elevations prepared by GTM Architects included with Exhibit 27 of the record in this case, as modified by the landscape plan submitted on December 27, 2007 and marked as Exhibit No. 42 of the record.

VOTE: 3-0-2 (Ruthanne G. Miller, Michael G. Turnbull, and Mary Oates Walker to approve; Shane L. Dettman abstaining; Marc D. Loud not participating or voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member has approved the issuance of this order.

ATTESTED BY:


JERELY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: APR 23 2008

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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.

BZA APPLICATION NO. 17679
PAGE NO. 11

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

LM

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



BZA APPLICATION NO. 17679

As Director of the Office of Zoning, I hereby certify and attest that on **APRIL 23, 2008**, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below.

Norman M. Glasgow, Jr., Esq.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W , Suite 100
Washington, D C. 20006

Paul Millstein
Douglas Development Corporation
702 H Street N.W., Suite 400
Washington, D.C. 20001

Mr. Jack F. Werner
6908 Willow Street, N.W.
Washington, D.C. 20012

Chairperson
Advisory Neighborhood Commission 4B
6856 Eastern Avenue, N W., #314
Washington, D C 20012

Single Member District Commissioner 4B07
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BZA APPLICATION NO. 17679
PAGE NO. 2

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Muriel Bowser, City Councilmember
Ward Four
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General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR

Tab B

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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BZA APPLICATION NO. 17679-A
PAGE NO. 2

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.

BZA APPLICATION NO. 17679-A
PAGE NO. 3

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.

BZA APPLICATION NO. 17679-A

PAGE NO. 4

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

**BZA APPLICATION NO. 17679-A
PAGE NO. 6**

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,

BZA APPLICATION NO. 17679-A
PAGE NO. 7

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.

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



BZA APPLICATION NO. 17679-A

As Director of the Office of Zoning, I hereby certify and attest that on **JUN 29 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:

Norman M. Glasgow, Jr., Esq. and Carolyn Brown, Esq.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006

Paul Millstein
Douglas Development Corporation
702 H Street, N.W., Suite 400
Washington, D.C. 20001

Chairperson
Advisory Neighborhood Commission 4B
6856 Eastern Avenue, N.W. #314
Washington, D.C. 20012

Single Member District Commissioner 4B07
Advisory Neighborhood Commission 4B
25 Sheridan Street, N.W.
Washington, D.C. 20011

Muriel Bowser, Councilmember
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BZA APPLICATION NO. 17679-A
PAGE NO. 2

Melinda Bolling, Esq.
Acting General Counsel
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W.
Washington, D.C. 20024

ATTESTED BY:


JAMISION L. WEINBAUM
Director, Office of Zoning

BZA APPLICATION NO. 17679
PAGE NO. 10

Willow Street, N.W. (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 824, 825, 840 and 843).

Accordingly, it is therefore **ORDERED** that the application be **GRANTED** in accordance with the architectural plans and elevations prepared by GTM Architects included with Exhibit 27 of the record in this case, as modified by the landscape plan submitted on December 27, 2007 and marked as Exhibit No. 42 of the record.

VOTE: **3-0-2** (Ruthanne G. Miller, Michael G. Turnbull, and Mary Oates Walker to approve; Shane L. Dettman abstaining; Marc D. Loud not participating or voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member has approved the issuance of this order.

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: **APR 23 2008**

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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.

BZA APPLICATION NO. 17679
PAGE NO. 11

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.

LM

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



BZA APPLICATION NO. 17679

As Director of the Office of Zoning, I hereby certify and attest that on APR 23 2008, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

Norman M. Glasgow, Jr., Esq.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
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Paul Millstein
Douglas Development Corporation
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6908 Willow Street, N.W.
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BZA APPLICATION NO. 17679
PAGE NO. 2

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Jill Stern, Esquire
General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR

Tab C

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of April, 2012, a copy of the request for a two-year extension of BZA Application Nos. 17679 and 17679-A, filed on behalf of Jemal's TP Land, LLC, was served on each of the following parties:

Mr. Paul Millstein
Douglas Development Corporation
702 H Street, NW, Suite 400
Washington, DC 20001
(Via Hand Delivery)

Mr. Jack F. Werner
6908 Willow Street, NW
Washington, DC 20012
(Via First-Class U.S. Mail)

Commissioner Sara Green, Chair
Advisory Neighborhood Commission 4B
6856 Eastern Avenue, NW, #316
Washington, DC 20012
(Via First-Class U.S. Mail)

Commissioner Judi Jones,
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Ms. Jennifer Steingasser
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Mr. Joel Lawson
District of Columbia
Office of Planning
1100 4th Street, SW - Suite E650
Washington, DC 20024
(Via Hand Delivery)



Leila M. Jackson Batties

Tab D

Board of Zoning Adjustment Application Nos. 17679 and 17679-A

Affidavit of Applicant
In support of Request for Two-Year Extension of Time

I, Douglas Jemal, being duly sworn, depose and state as follows:

1. I am the Managing Member of Jemal's TP Land, LLC, which owns Square 3357, Lots 26-28, 29, 40, 8808, 811, 814, 815, 818-820, 824, 825, 840 and 843 (6923-6953 Maple Street, NW and 6916-6926 Willow Street, NW) (the "Property"), which was granted special exception relief in 2008, pursuant to BZA Order No. 17679, to permit the construction of a new residential development consisting of two residential buildings, each containing 38 dwelling units, at the Property (the "Project").
2. Jemal's TP Land, LLC, is an affiliate of Douglas Development Corporation ("Douglas Development"); I am the president of Douglas Development and have nearly 30 years of experience in the local real estate industry.
3. In 2003, Douglas Development obtained a securitized loan with Morgan Stanley Mortgage Capital, Inc. (the "2003 Securitized Loan"), which encumbers a portion of the Property. The loan matures on August 5, 2013, and the terms of the loan agreement are such that we are unable to conduct a partial-defeasance, which would allow the release of that portion of the Property encumbered by the loan. Further, due to current market conditions, we are unable to pay off the loan prior to the maturity date.
4. Since the Project was initially approved by the BZA in 2008, the real estate market suffered a significant downturn and the economy has fallen into a state of a recession. Our experience has been, like most in the real estate industry, that financial institutions have either stopped lending or have greatly restricted lending for residential projects due to the uncertainty in market conditions and the softening of the housing market.
5. In light of the market conditions, we sought and the BZA approved a two year extension of time in Order No. 17679-A, which expires on April 23, 2012.
6. Because of the lending climate, we have been unable to modify the 2003 Securitized Loan. As long as a portion of the Property remains encumbered, we cannot provide a construction lender a first deed of trust on the full project collateral.
7. Over the past few years, we have approached Berkadia, Wells Fargo and Virginia Commerce Bank to finance the Project. None of the institutions were willing to finance the Project, primarily because they were uncomfortable with spec construction and the Takoma submarket.
8. The financing structure and loan agreements encumbering the Property are representative of the current state of the market. The economic conditions were beyond our control.

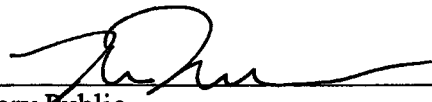
9. We are requesting a two year extension in order to allow time for the 2003 Securitized Loan to mature, which will then allow us to obtain financing for the construction of the Project. Based on our extensive experience in the local real estate market, the Takoma submarket should be much stronger by 2015, allowing potential lenders a greater level of comfort with the Project.

I solemnly affirm under the penalties of perjury that the contents of this Affidavit are true and correct to the best of my personal knowledge.



Douglas Jemal, Managing Member
Jemal's TP Land, LLC

Sworn to and subscribed before me, this 20 day of April, 2012.



Notary Public

JOSEPH C. LEMENSE, JR.
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires September 14, 2015

