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July 3, 2025

Mr. Frederick Hill, Chairman
DC Board of Zoning Adjustment
D.C. Office of Zoning
441 4th Street, NW, Suite 200S
Washington, DC 20010

Re: BZA Case No. 19823A, Wisconsin Avenue Baptist Church (WABC), 3920 Alton Place, NW, Washington, DC 20016 (Square 1779, Lot 14) – Opposition of Yuma Street Neighbors to WABC Request for Extension

Dear Chairman Hill:

The Yuma Street Requesters, who were parties to BZA Application No. 19832, hereby oppose the request by the Wisconsin Avenue Baptist Church (“WABC”), one of the applicants for the above-referenced project, to extend for an additional two years BZA Order 19832, issued on February 14, 2020, granting a special exception and variance to permit Sunrise Assisted Living to construct a continuing care retirement community (“CCRC”) on WABC’s property. Yuma Street Requesters concur in and adopt the opposition letter filed by the Tenley Neighborhood Association (“TNA”) on June 23, 2025, BZA Exh. 9, and emphasizes the following additional points.

Discussion

The Zoning Regulations provide that the Board may extend the time periods for expiration of a zoning order “for good cause shown” if the application is filed “before the expiration of the approval” and the criteria governing extensions has been met. 11 DCMR Subtitle Y-705 The criteria are (1) that the application be served on all parties, (2) that there are no substantial changes in the material facts underlying the Board’s approval of the project, and (3) that “[t]he applicant demonstrates that there is good cause for such extension, with substantial evidence” that one or more of the specified good cause criteria are met. *Id.* WABC fails to meet these requirements.

1. WABC's Request Was Not Filed Before the Expiration of the BZA Order

The Zoning Regulations specifically requires that the extension request must be made by the applicant "before the expiration of the approval." Subtitle Y-705.1. As noted by TNA, the two year time period of the BZA order began to run on April 6, 2023, when the D.C. Court of Appeals issued its decision denying the petitions to review the order. WABC has been aware since approximately October 2024, when Sunrise withdrew from the project, of the need to seek an extension of the two-year time frame in order to identify a new CCRC partner. However, WABC did not even attempt to file its extension request until April 28, 2025, three weeks after the BZA order expired, and the request was not properly served on the parties until June 3, 2025. WABC's request was therefore filed after the expiration of the zoning order approving the CCRC. BZA rule does not provide a basis for requesting an extension of the time for filing extension requests, but in any event, WABC makes no excuse or justification for its untimely filing.

2. There Has Been A Substantial Change in the Material Facts Underlying the Board's Approval of the Project

WABC's assertion that there has been no substantial change in the material facts underlying the Board's approval is demonstrably false. As WABC acknowledges, its co-applicant, Sunrise Assisted Living, was withdrawn from the project. This project was designed around Sunrise's operational specifications and specific commitments. The Board's conclusion that the application satisfied the requirements for an area variance was specifically based on the finding that the variance as necessary for the "economic viability of the proposed partnership between WABC and Sunrise. (FF 55-57, 90.)" BZA Order, Conclusion of Law 55, at p. order. In making its findings, this Board relied on the testimony of Sunrise Senior Living's Vice President Philip Kroskin and its financial analysis, Alice Katz. The withdrawal of Sunrise is a substantial change in the material facts underlying the Board's approval of the project.

3. WABC Fails to Satisfy the Criteria Requiring Substantial Evidence that the Regulatory Criteria Governing Good Cause Exists for the Extensions has Been Met.

The applicant "demonstrates that there is good cause for such extension, with substantial evidence of one (1) 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.

WABC argues that good cause exists because of pandemic-related disruptions in the financial market resulting from rising construction costs have impeded financing of the project. However, WABC's extension request provides no evidence whatsoever, much less substantial evidence, that pandemic-related disruptions in financial markets justify an extension. WABC's request is not supported by a single letter from a potential lender indicating that an extension of the BZA might allow room for sufficient improvement in the financial market to make a CCRC in this location a viable project. Rather, WABC states that Sunrise does not believe that the project is financially viable. There is no evidence that would allow this Board to deduce the reasons for Sunrise's decision. However, the fact that Sunrise has not opted to join WABC's request for an extension or even support WABC's request strongly suggests that there is no likelihood that the project will become viable within two years.

As WABC also admits, despite having discussions about the project with other CCRC operators, WABC has been unable thus far to find a new CCRC as a partner. Nor has WABC apparently identified even any potentially interested CCRC's in the months following Sunrise's withdrawal from the project. It is self-evident that this Board's approval of a CCRC minimally requires this Board to review the CCRC's specific operational plans and commitments. This Board should no more extend the order approving special exceptions and a variance for a CCRC without an operator's commitment to abide by the order, than it would grant the zoning approval in the first instance without a designated operator.

WABC asserts that its discussions with prospective CCRC partners have been hampered by the imminent expiration of the BZA order. WABC provides no evidence whatsoever to support this assertion, nor is this assertion plausible. WABC at this point could promise a turn-key CCRC to a new operator. An unexpired zoning approval would result in substantial savings of soft costs (lawyers, architects, planners, etc.) and provide needed certainty to any new CCRC operator. Any potentially interested partner could review the BZA order, understand the parameters of the project and the commitments and obligations to which it must agree in order to take advantage of the BZA order. Even assuming the imminent expiration of the order might prevent a new partner from entering into a binding that agreement with WABC to move forward with the project as approved, a genuinely interested potential CCRC partner would at a minimum want to support the extension of the zoning order by providing a non-binding statement of interest in constructing the project as approved by the BZA, and assuming the commitments made by Sunrise in its agreement with the ANC and incorporated into the order. The absence of even such a non-binding letter from a potential new CCRC operator is telling.

WABC also argues that the delays by the DC Court of Appeals case necessitate an extension of the order. However, litigation must be "pending" in order to provide good

cause for an extension. 11 DCMR Subtitle Y- 705.1(c)(3). The DC Court of Appeals affirmed the BZA order more than two years ago and that case is now fully resolved. WABC fails to provide evidence of any “pending litigation” that is causing delays beyond WABC’s control. In any event, any delays in the resolution of the petition for review filed by TNA in the DC Court of Appeals cannot justify the extension, as the BZA’s regulations already account for those delays by starting the two-year clock after the case is decided. *Id.* Subtitle Y-702.3.

There is no other factor beyond WABC’s control that warrants an extension. Rather, the reason for the extension is the decision by Sunrise Senior Living, a co-applicant, to withdraw from the project. As Sunrise was a co-applicant, its decision to withdraw from the project was plainly within its control. Accordingly, WABC has failed to demonstrate good cause for an extension since the “good cause” posited by WABC is wholly unsupported by any evidence, much less substantial evidence.

Conclusion

The continued existence of a zoning approval for a large-scale construction project in the neighborhood has depressed property values to nearby homes and will continue to do so long as the zoning order remains in effect. It is clear that WABC has no basis for any belief that a new CCRC can be identified in two years or more who would assume all of the design parameters and commitments made by Sunrise to secure BZA approval. WABC clearly must look to other means or projects to resolve its financial difficulties since the project approved by the BZA has no viable prospects of ever being constructed. However, if BZA grants an extension, the extension should run from October 2024 when WABC knew Sunrise had pulled out and needed to find a new partner, and expire in October 2026.

Feel free to email me if you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Ferster', with a stylized flourish at the end.

Andrea C. Ferster
Counsel for Yuma Street Requesters

Certificate of Service

I hereby certify that, on July 3, 2025, a copy of the foregoing, was served by email on the following:

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BZA Chairman Hill

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A handwritten signature in black ink, appearing to be 'A. Ferster', with a horizontal line extending to the right.

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