GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20968-A of National Geographic Society, pursuant to 11 DCMR Subtitle X § 901. 2, for a special exception under Subtitle C § 1501.1(d) to allow an eating or drinking establishment located within penthouse habitable space at an existing 11-story building in the D-6 zone at 1147 17th Street N.W. (Square 183, Lot 885).

HEARING DATE (20968): November 1, 2023

DECISION DATE (20968): November 1, 2023

ORDER ISSUANCE DATE (20968): November 8, 2023

TIME EXTENSION DECISION DATE (20968-A): January 28, 2026

PROPOSED ORDER DISMISSING REQUEST FOR TIME EXTENSION

By order issued November 8, 2023, the Board approved a special exception under Subtitle C § 1501.1(d) requested in an application filed by National Geographic Society (the "Applicant"). On November 12, 2025, the Applicant submitted a request pursuant to Subtitle Y § 705.2 for a time extension of the validity of the order approving the application. At a public meeting, the Board voted to dismiss the request because it was filed after the validity of the order had expired.

PRELIMINARY MATTERS

The Applicant served a copy of its request for a time extension by November 12, 2025 on Advisory Neighborhood Commission ("ANC") 2C, the only other party (in addition to the Applicant) in the original proceeding, as well as on the Office of Planning ("OP") and on Single Member District ANC 2C02.

Board of Zoning Adjustment
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CASE NO. 20968A
EXHIBIT NO. 10A

Applicant's request. The Applicant filed a request for a two-year time extension on November 12, 2025 which stated the expiration of the order that approved the application as November 18, 2025. (Exhibit 1.) On December 1, 2025 the Applicant filed a motion to waive the provisions of Subtitle Y § 702 or other relevant provision to allow the Board to accept and consider the time extension request. (Exhibit 6.)

OP Report. By report dated January 6, 2026, the Office of Planning recommended approval of the requested two-year time extension. (Exhibit 7.)

ANC Report. By letter dated January 26, 2026, ANC 2C stated that, at a regularly scheduled meeting with a quorum present, the ANC approved a resolution in support of the requested time extension.[1] (Exhibit 8.)

FINDINGS OF FACT

1. Application No. 20968 was submitted by the Applicant to request a special exception under Subtitle C § 1501.1(d) to allow an eating or drinking establishment located in penthouse habitable space at an existing 11-story building in the D-6 zone at 1147 17th Street N.W. (Square 183, Lot 885).

[1] The ANC report stated the date of the public meeting as January 13, 2025, which was likely an inadvertent error with respect to the year. According to its website, ANC 2C regularly conducts public meetings on the second Tuesday of each month, which would have included January 13, *2026* (as well as January *14*, 2025). See, anc2c.us. ANC 2C considered the Applicant's request for a time extension at its public meeting on January 13, 2026 (see the recording of the public meeting of ANC 2C of January 13, 2026 at https://www.youtube.com/watch?v=cZJGhL-ZiN4, starting at 56:30 and ending at 1:01.10).

2. The Board voted to approve the application at the conclusion of a public hearing on November 1, 2023.

3. The requested special exception was approved by summary order issued on November 8, 2023. The summary order specified the "FINAL DATE OF ORDER [as] November 8, 2023."

4. The summary order contained several boilerplate statements after the ordering paragraph. These statements included:

   (a) PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

   (b) PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

5. On November 12, 2025, the Applicant filed a request for a two-year time extension of the order that approved the special exception using Form 156, "Application for Time Extension," provided by the Office of Zoning. The Applicant completed the form by

stating that the "Final Date of Original Order" was November 8, 2023 and the "Expiration date of the original order" was November 18, 2025. (Exhibit 1.)

6. The Applicant's statement in support of the request also asserted that the order "expires on November 18, 2025." The Applicant sought a two-year extension, pursuant to Subtitle Y § 705, "so that it will have until November 18, 2027 to file a building permit application." (Exhibit 4.)

CONCLUSIONS OF LAW AND OPINION

Where the establishment of a use is dependent on the erection or alteration of a structure, an order of the Board approving a special exception to allow that use generally remains valid for a period of two years, within which time an application must be filed for a building permit for the erection or alteration approved. (Subtitle Y § 702.1.) The Board is authorized to extend the time period stated in Subtitle Y § 702.1 "for good cause shown upon the filing of a written request by an applicant before the expiration of the approval, subject to certain requirements. (Subtitle Y § 705.2.)

For purposes of Subtitle Y, the Board's Rules of Practice and Procedure, "a final order shall become final upon its filing in the record and service upon the parties, the date of which shall be stated in the conclusion of each order." (Subtitle Y § 604.7.) In this case, the final date of the order – when the order was filed in the record and service on the parties – was November 8, 2023 and that date was stated at the conclusion of the order.

The order approved a special exception under Subtitle C § 1501.1(d) to allow an eating or drinking establishment in penthouse habitable space at an existing building; that is, the establishment of the use approved by the special exception was dependent on the erection or alteration of a structure. Accordingly, the order remained valid for a period of two years, until November 8, 2025.

The Applicant's request for a time extension was filed November 12, 2025; that is, after the two-year period of validity of the order had ended. Pursuant to Subtitle Y § 705.2, the Board may extend the time period "upon the filing of a written request by the applicant *before the expiration of the approval…*" (emphasis added). Consistent with its rules of procedure, the Board voted to dismiss the Applicant's request for a time extension because it was filed *after* the expiration of the approval.[2] The approval of the special exception at issue was no longer valid because more than two years had elapsed since the approval became final and the Applicant had not filed an application for a building permit or a request for a time extension during that two-year period. Therefore, the Board determined that the Applicant's request to extend the validity must be dismissed because the validity had already expired.

Pursuant to Subtitle Y § 604.11, "No order of the Board shall take effect until ten (10) days after it becomes final." The Applicant argued that the two-year period of validity began when the order

[2] Compare, Application No. 19897-C (Coloma River Capital; March 28, 2024) (Board dismissed applicant's request for modification of an order that approved special exceptions to allow a new apartment house with ground floor retail because the modification request was filed after the expiration of the order, even after two extensions of its validity) and Application No. 20086-A (Oak Park Apartments LLC; request for time extension withdrawn on March 8, 2022) (Applicant requested waiver, pursuant to Subtitle Y § 101.9, to allow a time extension under Subtitle Y § 705 to extend the validity of an order approving a special exception even though the request was filed more than two years after the order was issued; Board noted at a public meeting that the order had expired so "there isn't anything in front of us" and "there's nothing to revive," but deferred decision and invited applicant to address Board's authority to grant a time extension after an order has expired; applicant instead withdrew the request).

became effective (in this case, on November 18, 2023), citing both Subtitle Y § 604.11 and the boilerplate provision included in the order. Therefore, according to the Applicant, the order remained valid until November 18, 2025 and the Applicant's November 12, 2025 request for a time extension was filed timely.

The Board did not agree. Subtitle Y § 702.1 states the circumstances under which an order "shall be valid for a period of two (2) years" without specifying the starting date of the two-year period. Other provisions in the Board's Rules of Practice and Procedure consistently specify requirements based on the date that an order becomes final.[3] A few rules do not employ the term "final order" even though the intended meaning is "final" and not "effective."[4] With one exception the Rules of Practice and Procedure do not mention the effective date.[5] The Applicant did not identify any

[3] See, e.g., Subtitle Y § 604.8 ("When the Board limits its approval of a special exception or variance to a term of years, the length of that term begins on the date upon which the order became final."); Subtitle Y § 701 ("Board…may order the effectiveness of a final decision and order of the Board stayed pending reconsideration or rehearing, or appeal of the decision and order to the Court of Appeals"); Subtitle Y § 600.2 (applicant or appellant may withdraw an application or appeal "at any time prior to the issuance of the Board's written final decision and order…"); Subtitle Y § 604.5 (formal notice of an order shall be given to any party to the application, by serving the party with a copy of the final order); Subtitle Y § 604.6 (a copy of the final order shall be served on the Councilmember representing the ward within which the property is located and any affected ANC); and Subtitle Y § 703.19 (a request for modification without hearing of plans shall be filed not later than two years after the date of the final order approving the application).

[4] See, e.g., Subtitle Y § 600.3(c) (if the Board dismisses an application for failure to comply with procedural requirements before the close of the record, a new application shall not be accepted for at least 90 days "after the date of the written order dismissing the application…"); Subtitle Y § 600.3(d) (if the Board dismisses an application for failure to comply with procedural requirements after the close of the record, a new application shall not be accepted for at least one year "after the date of the written order dismissing the application…")

[5] Pursuant to Subtitle Y § 706.1, if a use approved by special exception or variance is established, that use will expire only if (a) an expiration date is specified in the order, (b) the use is discontinued for at least three years in the absence of governmental action impeding access to the premises, and (c) "Either of the following occurs *after the effective date of the order granting the variance*: (1) A certificate of occupancy for a different use is issued; or (2) A residential use for which no certificate of occupancy is required is established." (emphasis added.) Use of "the effective date" for the limited circumstance described in Subtitle Y § 706.1(c) distinguishes that rule from the other provisions in the Board's rules, which are based on the date when a final order is issued, even if that date is not always specified in a given rule. Note that Subtitle Y § 706.1(a) refers only to "the order," without specifying final or effective, but must refer to the final order, which would determine the date that a term of approval would begin.

provision in the Board's rules that would negate the premise that an order of the Board becomes final when it is issued and therefore that the period of validity begins when the order is final.

The Board's rules create a 10-day period, immediately after an order is issued and final, before an order becomes effective. During that 10-day period, a party may file a motion for reconsideration or rehearing of the final order, which the Board may consider provided that no petition to review the order has already been filed with the District of Columbia Court of Appeals (see Subtitle Y §§ 700.1-700.9, 700.13); the Board may, on its own motion, decide to reconsider or rehear a case (see Subtitle Y § 700.10); and the Zoning Commission may exercise its *sua sponte* review of a final order issued by the Board (see Subtitle Z § 800). The 10-day deadline for those specific procedures did not warrant a conclusion that the period of validity of an order approving a special exception or variance must begin on any date other than the date when the order is issued and becomes final.[6]

Similarly, the Board was not persuaded by the Applicant that the boilerplate provision in the order required a different result. The boilerplate cited Subtitle Y § 702.1 in stating that the order "shall not be valid for more than two years after it becomes effective…." The Board regrets the erroneous reference to "effective," which is not specified in Subtitle Y § 702.1, but did not agree with the Applicant that the boilerplate provided a basis to disregard the general practice of the Board's Rules of Practice and Procedure to use the date an order is issued and final, not the effective date,

[6] Compare, *North Cleveland Park Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 541 A.2d 912 (D.C. 1988) (the 10-day period when the Zoning Commission may exercise its discretionary *sua sponte* review authority did not extend the time for filing a petition for review at the Court of Appeals). In that case, the association appealed a Board order dated October 10, 1986 and effective October 20, 1986, arguing that the order did not become final until the end of the 10-day period. The appeal was filed within 30 days of October 20 but the Court dismissed it for lack of jurisdiction because the appeal was untimely (that is, filed more than 30 days after October 10, 1986).

as the relevant date for the purposes set forth in Subtitle Y. Additionally, basing the period of validity on the effective date would extend the validity of an order to two years and ten days, contrary to the two-year time period specified in of Subtitle Y § 702.1.

For the reasons discussed above, the Board declined to grant the Applicant's request for a waiver, pursuant to Subtitle Y § 101.9, of the time period specified in Subtitle Y § 702.1 or any other provision of the Board's Rules that would allow consideration of a time extension request based on the effective date of the order. As "good cause" for a waiver, the Applicant asserted that the request was timely. The Board did not agree and instead based its decision to dismiss the request on Subtitle Y § 705.2, which requires the filing of a request for a time extension before the expiration of the approval in question.

Great weight. The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04.) In this case, OP recommended approval of the Applicant's request but based its recommendation on a mistaken statement that the order approving the special exception would not expire until November 18, 2025. The Office of Planning did not address why a time extension should be based on the effective date of the order rather than the date the order was issued and became final. For the reasons discussed above, the Board did not agree with OP that the time extension request should be granted.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (D.C. Official Code § 1-309.10(d)(3)(A).) In this case, ANC 2C adopted a resolution indicating the ANC's support for approval of the time-extension request. However, the ANC

report did not address the requirements of Subtitle Y § 705.2, including the provision stating that a request for a time extension must be filed before the expiration of the order in question. For that reason, the Board did not agree with ANC 2C that the Applicant's request for a time extension should be granted.

Exceptions to the proposed order. Because a majority of the Board members participating in the issuance of this order did not personally hear the evidence in this application, a proposed order was provided to the parties to afford them an opportunity to present written exceptions, in accordance with D.C. Official Code § 2-509(d).

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant's request for a two-year time extension of the validity of the order approving Application No. 20968 was not timely filed and the approval was no longer in effect. Accordingly, it is **ORDERED** that the request for a time extension of the Board's order in Application No. 20968 (issued November 8, 2023) is **DISMISSED.**

VOTE: **3-0-2** (Carl H. Blake, Brittney Drakeford, and Joseph S. Imamura to dismiss; two Board seats vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

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.