

March 24, 2017

Via Hand Delivery

Frederick L. Hill, Chairperson
D.C. Board of Zoning Adjustment
441 4th Street, N.W., Second Floor
Washington, D.C. 20001

Re: Board of Zoning Adjustment Order No. 18977 – Request for Extension of Order

Dear Chairman Hill and Members of the Board:

On behalf of Weaver Prospect LLC (the “**Property Owner**” or “**Applicant**”), the owner of 3220 Prospect Street, N.W. (Lots 104, 838, and 839 in Square 1207) (the “**Property**”), we hereby submit this application to request an extension of the expiration date of BZA Order No. 18977 (“**Order**”). This request is made pursuant to Subtitle Y § 705.1 of the Zoning Regulations. Enclosed with this letter are a Fee Calculator Form and a check for the applicable filing fee of \$270.40.

I. SUMMARY

In BZA Order No. 18977, the Board approved construction of a two-story commercial retail center at 3220 Prospect, N.W. in Georgetown. See Exhibit A. The Property is currently used as a surface parking lot. As part of the approval, the Board granted a variance from the off street loading requirements. The Property Owner seeks to secure a retail tenant(s) for the Project and undertake construction as soon as possible.

The Applicant has been told by potential lenders that approximately 65% of the space must be pre-leased in order to secure construction financing. Despite diligent efforts, the Applicant has not been able to secure tenants for the space, which has slowed its efforts to secure construction financing for the Project. Accordingly, the Applicant now requests a two-year extension of Order No. 18977. As detailed in this filing, the Applicant has undertaken the following efforts to move this Project forward:

- Marketed site to numerous retail tenants;
- McCaffery served as the broker in the marketing efforts;
- Explored possibilities of expansion and redesign to attract tenants; and
- Contacted three (3) banks (Cardinal Bank, Eagle Bank and Prudential Insurance Company) to secure construction financing.

II. BACKGROUND

The Board's approval in the Order will expire on April 27, 2017. With this letter, we request that the Board extend the Order by a period of two (2) years until April 27, 2019. As described more fully below, good cause exists for the Board to grant this extension request. There is substantial evidence that demonstrates that factors in the retail leasing industry beyond the Property Owner's reasonable control are the cause for the extension request as outlined further below.

III. PROPERTY OWNER'S REQUEST

Property Owner hereby requests that, pursuant to Subtitle Y § 705.1 of the Zoning Regulations, the BZA extend the time limits relating to BZA Order No. 18977 for two (2) more years until April 27, 2019.

IV. BZA STANDARD FOR APPROVING AN EXTENSION REQUEST

Subtitle Y § 705.1 sets forth clear standards against which the Board must evaluate extension requests. Upon receipt of this written request, the Board may extend the time period of the Order "for good cause shown." The Board must determine that:

- (a) this extension request is served on all parties to the application;
- (b) there is no substantial change of any of the material facts upon which the Board based its original approval that would undermine the Board's justification for approving the original application; and
- (c) the Property Owners demonstrate good cause for the requested extension, with substantial evidence for any one (1) or more of the following criteria.

The criteria supporting a finding of "good cause" include "(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."

For reasons set forth more fully below, the Board should find that good cause exists to grant this extension request because of "condition[s], circumstance[s], or factor[s] beyond the applicant's reasonable control."

V. SERVICE ON ALL PARTIES TO APPLICATION

This extension request has been properly served on all parties to the underlying application. There are no substantial changes to any material facts upon which the Board originally approved the application.

VI. SATISFACTION OF “GOOD FAITH” STANDARD FOR EVALUATION OF EXTENSION REQUEST

The Property Owner is seeking an extension from the BZA as the result of a unique confluence of factors that have slowed its project. Together, these factors constitute the “good cause” necessary for the Board to extend the Order.

A. Need for retail tenant(s) to begin construction

The Applicant cannot submit an application for a building permit until it secures the construction financing for this Project. The Applicant has met with three (3)¹ potential lenders and has been informed by each that a prerequisite for securing such financing is pre-leasing at least 65% of the retail space to tenants. The Applicant has been diligent in its efforts to secure tenants for the space; however, it has not been able to satisfy the 65% threshold required for financing. See the Affidavit attached as Exhibit B.

B. Outreach to Potential Retail tenants

The Applicant has made significant efforts to secure tenants for its Project; however, the influx of high end retail space in the District has made it challenging for the Applicant to sign tenants for its space. The Project is now competing with retail centers such as City Center and Shaw (as well as Tysons) to attract potential tenants, which has elongated its marketing period. Nevertheless, the Applicant has had significant outreach and has had discussions with the following potential tenants² regarding the Project. As demonstrated on the list, the Applicant has been able to retain some retailers, but not enough to qualify for construction financing.

Tenant ¹	Feedback
Restaurant	Applicant currently negotiating Letter of Intent (LOI) for 4,500 square feet.
Restaurant	Applicant currently working through 3rd round of LOI comments. Expected to be in go or no go position in 2nd Q 2017. 4,000 sf being contemplated.
Restaurant	Applicant working through 2nd round of LOI comments. Expected to be in go or no go position in 2nd Q of 2017. 4,200 SF being contemplated.
Athletic shoes	Potential tenant decided the sales environment in Georgetown.
Women’s fashion	Reviewed property.
Clothing store	Evaluated the property in 1st quarter of 2017.
Beauty products	Tenant looking for 7,000 to 12,000 sf and considering options.
Upscale Hardware	In current negotiations
Women’s clothing	In negotiations.
Grocery	Broker for tenant has reached out to Applicant but no deal as of yet.
Burger place	Reviewing marketing materials.
Clothing store	Tenant’s director of real estate visited the site in fall 2016. Issues with location on Prospect Street.
Fast casual restaurant	Tenant willing to work on deal if primary restaurant deal is in place.
Coffee shop	Tenant willing to work on deal if primary restaurant deal is in place.
Coffee shop (2)	Tenant willing to work on deal if primary restaurant deal is in place.
Outdoor furniture	Tenant looking for approximately 25,000 square feet. All options have been presented to them.
Bookstore/Café	Unable to reach agreement to date.
Gourmet grocery	Tenant now reviewing all retail opportunities.

¹ Cardinal Bank, Eagle Bank and Prudential Insurance Company
² Tenants’ names have been redacted.

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Tenant ¹	Feedback
Department Store	Applicant's leasing team met with team in summer 2016; tenant not ready to enter DC market and Tysons likely to be first location.
Women's clothing	Tenant's broker is looking to open boutique in Georgetown but nothing definite yet.
Women's clothing	Tenant would explore the Project if another clothier took a portion of the site.
Fast casual restaurant	Tenant interest in creating cluster of fast casual restaurants.
Fast casual restaurant	Tenant interest in creating cluster of fast casual restaurants.
Home decor	Tenant toured DC market in summer 2016.
Fast casual restaurant (2)	Tenant is not interested in Georgetown. Feels there is a lack of daytime traffic.
Restaurant/gourmet grocery	Looking at other space now in Georgetown.
Restaurant	Applicant presented tenant term sheet for 5,504 square feet and are discussing deal terms.
Women's clothing	As of Spring 2016 tenant not comfortable with the sales projections in Georgetown.
Tech store	Tenant considering renovating existing space but could later look for other opportunities.
Kitchen and bath	Tenant considering entering DC market and will evaluate the Project.
Beach wear	Tenant would like to know who anchor tenant is before responding.
Computer Company	Very cautious on future expansion plans.
Athletic shoes/clothes	Interested in Georgetown.
Gourmet Grocery	Upscale grocer with footprint of 17,000 square feet looking to be in Georgetown.
Drug store	Seeking 7,600 sf.
University office use	As of January 20th, tenant is focused on another office opportunity but this could be a viable option for their next round of office leasing needs.
Clothing company – new concept	Tenant looking for space in Georgetown but may be going to different location.
Restaurant	Tenant secured flagship location in another Georgetown location.
Clothing store	Met with tenant on site in late August, 2015. As of November 2015, this site did not make the "short list" for sites in DC they want to pursue.
Eyewear	Tenant looking for 1,800 to 2,000 square feet. Met with in DC in October. Will be good concept to pursue once anchor tenant is secured.
Drug Store	No commitment.
Office concept	Discussed site with head of RE for tenant. Depending on anchor deal that is struck this could be wise group to pursue for 2nd floor space once anchor deal economics are in place.
Restaurant	Tenant may consider once an anchor tenant is secured.
Candy Store	Tenant reached out about 5,000 square feet.
Clothing	Looked at site but deal signed at City Center.
Wireless provider	Tenant initially excited but nothing in progress.
Department store – discount	No commitment.
Women's Shop	Deals on hold in US.
Clothing men/women	Liked idea of site but would want key anchor tenant. Only in LA and NY now.
Restaurant	Looking to do casual coffee/café. Keep in touch.
Clothing	Signed lease across the street.
Luxury Fashion	Met with and discussed site extensively. Doing lease at City Center which will probably prevent Georgetown deal.
Italian Furniture	Looking to relocate from Bethesda; would be option for second floor space.
Women's clothing	Leased space at Georgetown Park.
Clothing	Eventually signed lease renewal at Georgetown Park.
Sports Club	Worked closely with tenant on their high end line up for second floor space.
Grocer	No commitment.
Restaurant	Discuss with tenant but they signed LOI for West End.
Women's clothing	Signed lease at City Center.
Women's clothing	They want to see other brands commit first.
Sports club	Worked with tenant extensively on this site but deal is dead.
Athletic clothing	Bought building at Wisconsin and M.
Furniture store	Does not like Georgetown as a market. Looking to make deal in Ballston.

Tenant ¹	Feedback
Clothing store	Focused on opening flagship location at City Center for now. Georgetown is not currently on expansion list. This might change in the future.
Clothing	Not expanding at this time.
French accessories	Doing deal in City Center. Georgetown not correct fit.
Outdoor fitness	Tenant has decided that Georgetown market is not right fit.
French accessories	Doing deal at City Center. Georgetown not right fit.
Outdoor apparel	Looking for 4-8,000 SF in Georgetown
Watch company	Looking for Georgetown location - would need to see what "anchors" are brought in first.
Women's fashion	Looking for Georgetown location - would need to see what "anchors" are brought in first.
Jewelry store	Looking for Georgetown location - would need to see what "anchors" are brought in first.
Toiletries	Looking for Georgetown location - would need to see what "anchors" are brought in first.
Restaurants	Looking for the correct Georgetown location. Toured site.
Ice Cream	Wants to do deal but very small so need to determine larger users first.
Gelato	Looking for new Georgetown location.
Cupcake shop	Looking to do deal on Prospect. Will need to determine fate of larger users first.
Coffee shop	Tenant looked at site but are probably going to focus efforts on their flagship model in more emerging neighborhoods like Shaw/H Street.
Restaurant	They are not doing any more DC deals for now.
Men's store	They expanded on M Street.
Men's store	They are happy where they are.
Clothing store	Not ready for DC market now.
Women's clothing	Not ready for DC market now.
Design store	Rent issues
Restaurant	Toured site with CEO. Liked site but would want outdoor patio on 2nd floor.
Shoe store	Discussed site with tenant. Not looking in DC right now.
Clothing	They are currently happy with Georgetown location.
Clothing	Discussed site with broker. Looking for immediate opportunity in Georgetown.
Restaurant	Not interested in another Georgetown location.
Women's clothing	Discussed site with RE. Not looking at DC now.
Clothing	Discussed site with head of RE. They are happy with current Georgetown positioning.
Men's clothing	Discussed site. Will want to see quality co-tenancy.
Women's clothing	Discussed site with RE. Not looking at DC now.
Footwear and apparel	Discussed site with local broker. Not appropriate player at this time.
Car dealer	Spoke with head of real estate. They are more a of mall player. Said to keep in touch.
Italian grocery	They are looking to be an amenity to an office building.
Men's clothing	Singed lease at Cady's Alley.
Eyeglasses	Signed lease on M Street.

The above listing of potential tenants shows that over the past two (2) years the Applicant has diligently pursued a variety of tenant options for the site. Despite these efforts, no tenants are secured as of the date of this letter. Until the project is 65% pre-leased, financing cannot be secured.

C. Good Faith Effort to Move Forward

When evaluating this extension request, the Board should also consider the Property Owner's and affiliates' good faith and diligent efforts to move forward with development on the Property. The Property Owner has every intention of proceeding with this project, and it has recently entered into serious negotiation with several restaurants. The Applicant firmly believes

that once the lead anchor(s) is in place, additional retailers will be forthcoming based upon tenant representations.

VII. THE EXTENSIONS MEET THE REQUIREMENTS OF SUBTITLE Y § 705.1 (A), (B), AND (C)

In addition to the good cause describe above, further factors support the approval of the requested extensions as described below.

A. Extension Request Served on All Parties to the Application

In the instant case, this extension request is being served simultaneously on all parties to the original application for BZA Case No. 18977, which includes only the Office of Planning and ANC 2E. The parties to the application will be allowed thirty (30) days to respond to this request.

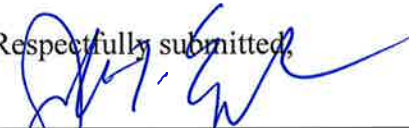
B. No Substantial Change to Any of the Material Facts


The factors satisfying the variance relief for the Property remain as they were for the Board's approval of the requested relief. There has been no substantial change in any of the material facts relating to the case. The loading variance relief is still in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and does not affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. In fact, under the 2016 Regulations, Subtitle C § 909.2, the Board of Zoning Adjustment may grant such loading relief as a special exception.

C. Conformance with the Comprehensive Plan and Zoning Regulations

This request for a waiver for good cause shown under Subtitle Y § 705.1 of the Zoning Regulations for an extension of time within which to complete the projects on the Property is consistent with the intent and purposes of the Zoning Regulations, the requirements of Subtitle Y of the Zoning Regulations, and the District of Columbia Comprehensive Plan ("Plan") for the National Capital. The Land Use Map of the Plan designates the site for Low Density Commercial use. The Plan's land use designation of the Property has not changed since the Weaver Prospect Order was originally approved.

We would be happy to produce any other information or evidence in support of the above letter and greatly appreciate your consideration of this matter.

Respectfully submitted,


John T. Epting


Christine Roddy

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Certificate of Service

I certify that on 3/24, 2017, I delivered a copy of the foregoing document via hand delivery or U.S. mail to the addresses listed below.


Christine Roddy

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