

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



**Application No. 14096-B of Wilson NPB LLC**, pursuant to 11 DCMR Subtitle Y § 705.1, for a two-year time extension of BZA Order No. 14096-A approving a special exception under the Zoning Regulations of 1958 from the unused bonus density requirements under § 768, to permit the interior renovation of an existing building in the D-7 Zone District (formerly DD/C-5 Zone District) at premises 529 14th Street, N.W. (Square 254, Lot 53).

**Hearing Date** (14096-A): July 6, 2016  
**Decision Date** (14096-A): July 6, 2016  
**Final Date of Order** (14096-A): July 8, 2016  
**Time Extension Decision:** September 19, 2018

**SUMMARY ORDER ON MOTION TO EXTEND**  
**THE VALIDITY OF BZA ORDER NO. 14096-A**

The Underlying BZA Order

On July 6, 2016, the Board of Zoning Adjustment (the "Board") approved the Applicant's request for a special exception under the Zoning Regulations of 1958<sup>1</sup> from the unused bonus density requirements under § 768, to permit the interior renovation of an existing building in the D-7 Zone District (formerly DD/C-5 Zone District<sup>2</sup>) at premises 529 14th Street, N.W. (Square 254, Lot 53) (the "Subject Property" or "Site"). In Order No. 14096-A (the "Order"), the Board granted a special exception to modify the plans approved in Order No. 14096 to utilize unused bonus density for an interior-only renovation of the building located on the Subject Property (the "Building"), as well as other special exception and variance relief, pursuant to Order No. 13507.

---

<sup>1</sup> The 1958 Zoning Regulations were in effect when BZA Case No. 14096-A was heard and decided by the Board. The 1958 Zoning Regulations were repealed and replaced in their entirety by the 2016 Zoning Regulations on September 6, 2016. Pursuant to Subtitle A § 106 of the 2016 Zoning Regulations, the construction authorized by BZA Order No. 14096-A is vested and is subject only to the provisions of the 1958 Zoning Regulations. (Exhibit 3.)

<sup>2</sup> The zone districts were renamed in the 2016 Zoning Regulations. Thus, the DD/C-5 District is now the D-7 District under the 2016 Regulations. This is reflected on the Zoning Map. This change in nomenclature has no effect on the vesting or validity of the original application.

**BZA APPLICATION NO. 14096-B**  
**PAGE NO. 2**

In the Order, the Board approved a modification of the previously-approved plans, which, in turn, changed the amount of bonus density previously granted. The Building was constructed pursuant to the plans approved in Order No. 14096, but used less bonus density than the Board found was available pursuant to the bonus incentive system. The bonus density was generated and awarded pursuant to § 768 of the 1958 Zoning Regulations. The Order allows the Applicant to utilize the remaining excess available bonus density to add approximately 20,500 square feet of gross floor area to the Building.

The application was granted on July 6, 2016, and the Board issued its written order, No. 14096-A (the "Order") on July 8, 2016. Pursuant to 11 DCMR § 3125.9 in the 1958 Zoning Regulations (now Subtitle Y § 604.11 of the 2016 Regulations), the Order became final on July 8, 2016 and took effect ten days later, on July 18, 2016. Under the Order and pursuant to § 3130.1 of the 1958 Regulations (now Subtitle Y § 702.1 of the 2016 Regulations), the Order was valid for two years from the time it was issued.

Motion to Extend

On July 17, 2018, the Applicant submitted an application for a time extension requesting that the Board grant a two-year extension of BZA Order No. 14096-A. This request for extension is pursuant to Subtitle Y § 705 of the 2016 Zoning Regulations, which permits the Board to extend the time periods in Subtitle Y § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval.

In its request for a two-year extension, the Applicant stated that the time extension is needed due to economic and market conditions beyond the Applicant's reasonable control which are contributing to the vacancy percentage of the Building. As attested to by the Applicant's affidavit in the record at Exhibit 3B, the Building is currently 41% vacant despite the Applicant's active efforts to attract additional tenants since the Order was issued. The Applicant is now undertaking renovations to enhance the building's lobby and common spaces in order to remain competitive in the rental market and attract new tenants to fill the vacancies. Because of the existing vacancy of the Building, the Applicant states that proceeding with the expansion before completing the renovations would negatively impact the Building's economic viability and that it could not, at this time, justify the expense and effort of utilizing the unused bonus density to increase the density of the Building as adding the bonus density would only serve to further increase the Building's vacancy. Before adding the density approved by the Order, the Applicant intends to complete the renovations to the Building's common spaces and lease up additional tenant space to reduce the vacancy percentage. The Applicant indicated that it intends to file for a building permit and utilize the approved excess bonus density after it has filled the existing vacancies. Consequently, the Applicant needs additional time to complete the its renovation of the common spaces and to lease up vacant tenant space. The Applicant states that a two-year extension of the Order will provide it the necessary time before embarking on an addition of density. (Exhibit 3.)

**BZA APPLICATION NO. 14096-B**  
**PAGE NO. 3**

Pursuant to Subtitle Y § 705.1(a), the Applicant shall serve on all parties to the application and all parties shall be allowed 30 days to respond. Pursuant to Subtitle Y § 705.1(b), the Applicant shall demonstrate that there is no substantial change in any of the material facts upon which the Board based its original approval of the application. Finally, under Subtitle Y § 705.1(c), good cause for the extension must be demonstrated 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.

The Board finds that the motion has met the criteria of Subtitle Y § 705.1 to extend the validity of the underlying order. Pursuant to Subtitle Y § 705.1(a), the record reflects that the Applicant served the parties to the original application, including Advisory Neighborhood Commission ("ANC") 2C, as well as the Office of Planning. (Exhibit 3.)

ANC 2C was the only party to the application in BZA Case No. 14096-A. The ANC did not submit a report regarding the time extension request.

The Office of Planning ("OP") submitted a report, dated September 7, 2018, recommending approval of the request for the time extension. (Exhibit 6.)

As required by Subtitle Y § 705.1(b), the Applicant demonstrated that there has been no substantial change in any of the material facts upon which the Board based its original approval in Order No. 14096-A. There have also been no substantive changes<sup>3</sup> to the Zone District classification applicable to the Site or to the Comprehensive Plan affecting the Site since the issuance of the Board's order that would affect the application.

To meet the burden of proof for good cause required under Subtitle Y § 705.1(c), the Applicant provided a statement and other evidence regarding factors causing a delay in obtaining a building permit and utilizing the full amount of bonus density. As detailed in an affidavit signed by Maria Blake, Senior Vice President of Normandy Real Estate Partners, which manages the property that is subject to Order No. 14096-A on behalf of the Applicant, the Building has only a 41% occupancy rate and that proceeding with the expansion before completing the existing renovations and increasing the Building's occupancy would negatively impact the Building's economic viability. The Applicant indicated that it is now undertaking renovations to enhance the building's lobby and common spaces to attract new tenants to fill the vacancies. The renovations include modernizing elevators; upgrading the HVAC system; renovating common corridors, elevator lobbies, and restrooms; renovating the atrium; adding a lobby with concierge desk at one of the

---

<sup>3</sup> Although the zone districts were renamed in the 2016 Zoning Regulations, this change in nomenclature does not constitute a substantive change as contemplated by Subtitle Y § 705.1(b), and has no effect on the vesting or validity of the original application.

**BZA APPLICATION NO. 14096-B**  
**PAGE NO. 4**

entrances; adding a fitness center and bike storage room; and adding a tenant amenity center with conferencing center, café, and lounge/entertainment space. The Applicant stated that it intends to file for a building permit and utilize the excess bonus density after filling the existing vacancies and that it needs the requested two-year extension of the Order to complete the renovation of the common spaces and to lease up vacant tenant space before adding bonus density. (Exhibits 3 and 3C.)

The Board finds that the Applicant has demonstrated good cause under Subtitle Y § 705.1(c)(1) by showing an inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control. The Applicant stated that since the issuance of the Order, the Applicant had been diligently working to resolve the tenant vacancies in the Building, including undertaking to complete extensive renovations in the common areas of the Building. The Applicant stated that the Building has only a 41% occupancy rate and therefore that proceeding with the expansion before completing the existing renovations and increasing the Building's occupancy would have a negative impact on its economic viability. (Exhibits 3 and 3C.)

Given the totality of the conditions and circumstances described above and after reviewing the information that was provided, the Board finds that the Applicant satisfied the "good cause" requirement under Subtitle Y § 705.1(c), specifically meeting the criteria for Subtitle Y § 705.1(c)(1). The Board finds that the inability of the Applicant to use the excess bonus density approved in the Order where the current 41% tenant vacancies would make incurring the expense and effort of adding density unjustifiable constitutes good cause and is beyond the Applicant's reasonable control and that the Applicant demonstrated that it has acted diligently, prudently, and in good faith to proceed towards the implementation of the Order.

Having given the written report of OP great weight, the Board concludes that extension of the approved relief is appropriate under the current circumstances and that the Applicant has met the burden of proof for a time extension under Subtitle Y § 705.1.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

Pursuant to 11 DCMR Subtitle Y § 702, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of a two-year time extension of Order No. 14096-A, which Order shall be valid until **July 18, 2020**, within which time the Applicant must file plans for the proposed project with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

**VOTE: 5-0-1** (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Michael G. Turnbull to APPROVE.)

**BZA APPLICATION NO. 14096-B**  
**PAGE NO. 5**

**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:** October 2, 2018

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.