

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17703-B of Sidwell Friends School, pursuant to 11 DCMR Subtitle Y, § 705.1, for a two-year time extension of BZA Order No. 17703A approving a special exception from the private school requirements of § 206 to increase the size of an existing education campus and number of students and staff in the C-2-A/R-1-B (now MU-4 and R-1-B) District at premises 3825 Wisconsin Avenue N.W. (Square 1825, Lot 818).¹

Hearing Dates (17703-A):	January 26, 2016, March 1, 2016, and March 29, 2016
Decision Date (17703-A):	March 29, 2016
Final Date of Order (17703-A):	April 1, 2016
Time Extension Decision:	April 25, 2018

SUMMARY ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17703A

The Underlying BZA Order

On March 29, 2016, the Board of Zoning Adjustment (the "Board") approved the Applicant's request for a special exception from the private school requirements of § 206 under the 1958 Regulations to increase the size of an existing education campus and number of students and staff in the C-2-A/R-1-B (now MU-4 and R-1-B) District² at premises 3825 Wisconsin Avenue N.W. (Square 1825, Lot 818) (the "Subject Property"). The Application was granted on March 29, 2016, and the Board issued its written order, No. 17703-A (the "Order") on April 1, 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 April 1, 2016 and took effect ten days later. Under the

¹ This and all other references to the relief granted in Order No. 17703-A are to provisions that were in effect the date the Application was heard and decided by the Board of Zoning Adjustment (the "1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text (the "2016 Regulations"). The repeal of the 1958 Zoning Regulations and their replacement with the 2016 Regulations has no effect on the vesting and validity of the original application.

² The zone districts were renamed in the 2016 Zoning Regulations. Thus, the C-2-A/R-1-B District is now the MU-4/R-1-B 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.

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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 -- until April 1, 2018. Order No. 17703-A is subject to ten conditions.

Motion to Extend

On March 23, 2018, the Applicant submitted an application for a time extension requesting that the Board grant a two-year extension of Order No. 17703-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 to accommodate a lease extension for the Washington Home, which is the site of the campus expansion previously approved, and because of associated costs. The parties in the original case, Advisory Neighborhood Commission (“ANC”) 3F and the Van Ness/Veazey Street Residents Coalition and the Springland Farm Community LLC, both proponents of the original application, submitted reports and letters in support of the request for a time extension.

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 ANC 3F, the Van Ness/Veazey Street Residents Coalition, and the Springland Farm Community, LLC, as well as the Office of Planning. (Exhibit 3.) The parties were allowed at least 30 days to respond. ANC 3F submitted a report and resolution in support of the time extension request. The ANC’s report and resolution indicate that at a duly noticed and scheduled public meeting of the ANC on April 17, 2018, at which a quorum was present, the ANC voted 5-0-0 to support the Applicant’s request for a time extension. (Exhibits 10 and 11.) The Van Ness/Veazey Street Residents Coalition, which was a party-proponent to the original case, submitted a letter of support for the time extension request. (Exhibit 7.) The Springland Farm Community LLC, which also was a party-proponent to the original case, submitted a letter of support for the time extension request. (Exhibit 8.) The Office of Planning

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(“OP”) submitted a report, dated April 13, 2018, recommending approval of the request for the time extension. (Exhibit 9.)

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. 17703-A. There have also been no substantive changes³ 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. (Exhibits 3 and 5.) The good cause basis for the request was the Applicant’s inability to move forward with the project due to economic and market conditions beyond its control, pursuant to Subtitle Y § 705(c)(1). The Applicant states that since the issuance of the Order, the Applicant has been diligently working to fundraise and move forward to finalize its plans for its campus expansion into the Subject Property, including determining what the most efficient use of the expansion space and the overall campus will be. According to the Applicant, its fundraising campaign is well underway. However, costs associated with the project have increased in the two years since the Order was issued due to economic and market conditions in the District. Consequently, the Applicant needs additional time to continue its fundraising efforts to effectuate the project and finalize its plans. A two-year extension will allow the Applicant that time necessary to meet the rise in costs. Also, since the Order was issued, Washington Home has continued to operate on the Subject Property. Washington Home has been having difficulty finding a new space to operate and continues to operate on the Subject Property, caring for continuing hospice patients. Recently, Washington Home requested a three-year⁴ lease extension from the Applicant to give it time to find an appropriate facility at which to care for its patients. The Applicant has stated that it would like to accommodate Washington Home’s request, but to do so, it needs to obtain this extension from the Board. The Applicant cites as good cause for a two-year time extension its efforts to finalize its plans and secure financing as well as the need to accommodate the Washington Home’s request for additional time to find an appropriate facility to care for its hospice patients. (Exhibit 3.)

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 delay in the Applicant being able to finalize its plans and

³ 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.

⁴ The application requests a two-year time extension, although the supporting affidavit mentions a three-year extension. Pursuant to Subtitle Y § 705.2, a time extension that is granted pursuant to Subtitle Y § 705.1 shall not exceed two years. Although the record makes reference to a request for a three-year time extension, the Board determined that this was a discrepancy, as the regulations limit time extensions to no more than two-year periods.

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secure financing as well as to accommodate the Washington Home's request for additional time to find an appropriate facility to care for its hospice patients 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 reports of the ANC and 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. 17703-B, which Order shall be valid until **April 1, 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: 3-0-2 (Carlton E. Hart, Michael G. Turnbull, and Lorna L. John to APPROVE; Frederick L. Hill and Lesylleé M. White, not present or 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:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: April 27, 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.