

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18916-C of 49th Street Developer LLC, pursuant to 11 DCMR Subtitle Y, § 705.1, for a second two-year time extension of BZA Order No. 18916 approving special exception from the new residential developments requirements under § 353, to construct a new affordable multi-family residential development for seniors and 21 affordable one-family dwellings in the R-5-A District on undeveloped land at the intersection of East Capitol Street, S.E. and 47th Street, S.E. (Square 5348, Lots 1-8).

HEARING DATE (18916):	February 10, 2015
DECISION DATE (18916):	February 10, 2015
ORDER ISSUANCE DATE (18916):	February 12, 2015
FIRST TIME EXTENSION DECISION DATE:	January 18, 2017
SECOND TIME EXTENSION DECISION DATE:	January 6, 2019

SUMMARY ORDER ON SECOND REQUEST
FOR TWO-YEAR TIME EXTENSION

BACKGROUND

On February 10, 2015, the Board of Zoning Adjustment (the "Board") approved the Applicant's request for a special exception from the new residential developments requirements under § 353 of the Zoning Regulations of 1958,¹ to construct a new affordable multi-family residential development for seniors and 21 affordable one-family dwellings in the R-5-A District on undeveloped land at the intersection of East Capitol Street, S.E. and 47th Street, S.E. (Square 5348, Lots 1-8). The Board issued Order No. 18916 on February 12, 2015. Under the Order and pursuant to Subtitle Y § 702.1 of the Zoning Regulations, the Order was valid for two years from the time it was issued -- until February 12, 2017.

¹ The original application was filed under the Zoning Regulations of 1958, which were repealed on September 6, 2016 and replaced with new text of Title 11, DCMR (the "2016 Regulations"). Other than the description of the original application and its caption, the other references in this Order to provisions contained in Title 11 DCMR are to 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.

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On April 28, 2016, the Applicant filed a request for a two-year time extension as Application No. 18916-A, but withdrew that request. On December 8, 2016, the Applicant filed a subsequent request for a two-year extension of Order No. 18916 as Application No. 18916-B. The Board granted the request for time extension on January 18, 2017 and issued Order No. 18916-B on February 1, 2017. (Exhibit 1.) By granting the two-year time extension, the Board extended the time period of the underlying Order's validity until February 12, 2019.

SECOND MOTION TO EXTEND THE VALIDITY OF THE ORDER

On December 19, 2019, the Applicant submitted a request that the Board grant a second two-year extension of Order No. 18916. (Exhibits 1-6.) This request for extension is pursuant to Subtitle Y § 705 of the 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.

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 Applicant served the request on Advisory Neighborhood Commission ("ANC") 7E, the only other party to the underlying application, on December 19, 2018. (Exhibit 3.) ANC 7E did not submit a written report to the record. The Applicant also served the request on the Office of Planning ("OP") and the District Department of Transportation ("DDOT"). OP submitted a report recommending approval of the proposed time extension. (Exhibit 7.) DDOT did not submit a report to the record.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board finds that the Applicant has met the criteria of Subtitle Y § 705.1 to extend the validity of the underlying order. As noted, the only parties to the case were the ANC and the Applicant. Accordingly, a decision by the Board to grant request would not be adverse to any party. Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

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It is therefore **ORDERED** that request for two-year time extension to the validity of the Board's approval in Order No. 18916, as previously extended by Order No. 18916-B, is hereby **GRANTED**, and the Order shall be valid until **February 12, 2021**.

VOTE: 5-0-0 (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Anthony J. Hood to APPROVE.)

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: February 7, 2019

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.